THE TRYAL OF Sir Henry Vane, Kt.

AT

The KINGS BENCH, *Westminster*, *June* the 2d. and 6th. 1662.

Together

With what he intended to have Spoken the Day of his Sentence, (*June* 11.) for *Arrest of Judgment*, (had he not been interrupted and over-ruled by the Court) and his *Bill of Exceptions*.

With other Occasional SPEECHES, *&c.*

Also his SPEECH and PRAYER, *&c.* on the *Scaffold*.

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Law
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"Vane"

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The TRYAL of Sir *Henry Vane* Knight, at the Kings Bench, *Westminster*, June the 2d. and 6th. 1662.

READER,

THou shalt not be detained with any flourishing Preface. 'Tis true; whether we consider the Person or Cause, so much might pertinently be said, as (were the Pen of some ready Writer imployed therein) a large Preamble might seem to need but a very short Apology, if any at all. Yet, by that time we have well weighed what this Sufferer hath said for himself, and left behind him in writing, it will appear, that there needed not any tongue of the Learned, to form up an Introduction thereunto, but meerly the hand of a faithful Transcriber of his own Observations, in defence of himself and his Cause. Rest assured of this, thou hast them here fully and clearly represented.

The necessity of this course for thy information, as to the truth of his Case, be pleased to consider on these following accounts. He was much over-ruled, diverted, interrupted, and cut short in his Plea (as to a free and full delivery of his mind upon the whole matter at the Bar) by the Judges of the Kings-Bench, and by the Kings Counsel. He was also denyed the benefit of any Counsel to speak on his behalf.

And what he did speak at the Bar and on the Scaffold, was so disgustful to some, that the Books of those that took Notes of what passed all along in both places, were carefully called in and suppressed. It is therefore altogether unpossible to give thee a full Narrative of all he said, or was said to him, either in Westminster-Hall, *or on* Tower-Hill.

The Defendant foreseeing this, did most carefully set down in writing, the substance of what he intended to enlarge upon, the three dayes of his appearance at the Kings-Bench Bar, and the day of his Execution. Monday June 2. 1662, *was the day of his Arraignment. Friday* June 6. *was the day of his Tryal, and the Jurors Verdict. Wednesday* June 11. *was the day of his Sentence. Saturday* June 14. *was the day of his Execution on* Tower-Hill, *where limitations were*

put

put upon him, and the interruptions of him by many hard ſpeeches and diſturbing carriages of ſome that compaſſed him about upon the Scaffold, as alſo by the ſounding of Trumpets in his face to prevent his being heard, had many eye and ear witneſſes.

Upon theſe conſiderations, I doubt not, it will appear undiſpenſably neceſſary, to have given this faithful Tranſcript of ſuch Papers of his, as do contain the moſt ſubſtantial and pleadable grounds of his publick actings, any time this twenty years and more, as the only means laſt of giving any tolerable account of the whole matter, to thy ſatisfaction. Yet ſuch Information as could be picked up from thoſe that did preſerve any Notes, taken in Court or at the Scaffold, are here alſo recorded for thy uſe, and that, faithfully, word for word.

Chancellor Forteſcue *doth right worthily commend the Laws of* England, *as the beſt now extant and in force, in any* Nation *of the world, affording (if duely adminiſtred) juſt outward liberty to the People, and ſecuring the meaneſt from any oppreſſive and injurious practices of Superiours againſt them. They give alſo that juſt Prerogative to Princes, that is convenient or truly uſeful and advantagious for them to have; that is to ſay, ſuch as doth not enterfere with the Peoples juſt Rights, the intire and moſt wary preſervation of which, as it is the Covenant-duty of the Prince, ſo is it his beſt ſecurity and greateſt honour. 'Tis ſafer and better for him to be loved and rightly feared by free Subjects, than to be feared and hated by injured ſlaves.*

The main fundamental Liberties of the free People of England, *are ſummed up and comprehended in the 29th Chapter of* Magna Charta. *Theſe be the words;*

No freeman ſhall be taken or impriſoned, or be diſſeized of his Freehold, or Liberties, or free-cuſtoms, or be out-lawed or exiled, or any otherwiſe deſtroyed. Nor will we paſs upon him, or condemn him, but by lawful Judgement of his Peers, or by the Law of the Land. We will ſell to no man, we will not deny or defer to any man, either Juſtice or Right.

Lord Chief Juſtice Cook *obſerves here nine famous branches of the Law of* England, *couched in this ſhort Chapter, and diſcourſes upon them to good purpoſe. He ſaith alſo, that from this Chapter, as out of a root, many fruitful branches of the Law of* England *have ſprung.*

As for the very leading injury to other wrongings of the Subject, (to wit, the reſtraint or impriſonment of his perſon) ſo curious and tender is the Law in this point, that (ſayes Cook) *no man is to be attached, arreſted, taken, or reſtrained of his liberty, by petition or*

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ſuggeſtion to the King or to his Council, unleſs it be by Indictment or Preſentment of good and lawful men (of the neighbourhood) where ſuch deeds be done.

This great Charter of Englands Liberties, *made* 9 Hen. 3. *and ſet in the front of all ſucceeding Statute-Laws or Acts of Parliament, (as the Standard, Touch-ſtone or Jury for them to be tryed by) hath been ratified by about two and thirty Parliaments, and the Petition of Right,* 3. Caroli.

The two moſt famous Ratifications hereof, entituled, Confirmationes Chartarum, & Articuli ſuper Chartas, *were made* 25 *and* 28 *of* Edw. 1.

All this ſtir about the great Charter, ſome conceive very needleſs, ſeeing that therein are contained thoſe fundamental Laws or Liberties of the Nation, which are ſo undeniably conſonant to the Law of Nature, or Light of Reaſon, that Parliaments themſelves ought not to abrogate, but preſerve them. Even Parliaments may ſeem to be bounded in their Legiſlative Power and Juriſdiction, by divine Equity and Reaſon, which is an eternal and therefore unalterable Law. Hence is it, that an Act of Parliament that is evidently againſt common Right or Reaſon, is null and void in it ſelf, without more ado. Suppoſe a Parliament by their Act ſhould conſtitute a man Judge in his own cauſe, give him a meer Arbitrary power; ſuch Act would be in it ſelf void.

This is declared to be the ground of that exemplary Juſtice done upon Empſon *and* Dudley, *(as acting contrary to the Peoples Liberties in* Magna Charta) *whoſe Caſe is very memorable in this point. For, though they gratified* Hen. 7th *in what they did, and had an Act of Parliament for their Warrant, made the* 11th *of his Reign, yet met they with their due reward from the hands of Juſtice, that Act being againſt Equity and common Reaſon, and ſo, no juſtifiable ground or apology for thoſe infinit Abuſes and Oppreſſions of the People, they were found guilty of.*

The Statute, under colour whereof they acted, ran to this effect. Be it enacted, that the Juſtices of the Aſſizes, and Juſtices of the Peace upon Information for the King, before them to be made, have full power and authority by their diſcretion, to hear and determine all offences and contempts. *Having this ground, they proceeded againſt the People, upon meer Information, in the execution of Penal Laws, without any Indictment or Preſentment by good and lawful men, but only by their own Promoters or Informers, contrary to the* 29th *of*

Magna

Magna Charta, *which requires, That no free-man be proceeded againſt, but by lawful Judgment of his Peers, or by the Law of the Land.*

Secondly, This Act allowed them to hear and determine arbitrarily, by their own diſcretion, which is not according to the Law and Cuſtom of England. *And* Cook *ſayes, 'tis the worſt (and moſt aggravated) oppreſſion of all, that is done under the colour of Law, or diſguiſe of Juſtice.*

Such a Statute or Act of Parliament, is, not only againſt the light of Reaſon, but againſt the expreſs letter of unrepealed Statute-Law; 42. Edw. 3. 1. *It is aſſented and accorded,* That the great Charter, and the Charter of Foreſt be holden and kept in all points, and if any Statute be made to the contrary, that ſhall be holden for none.

This alſo is conſonant to the firſt chapter of the great Charter it ſelf, made 9. Hen. 3. We have granted to all the free-men of our Realm, theſe Liberties under-written, to have and to hold to them and their heirs, of Us and our Heirs, for ever.

But what if this great Charter it ſelf had never been made? had England *been to ſeek for righteous Laws and juſt Liberties? nothing leſſe. The ſame Liberties and Laws were ratified before that, in the great Charter made the ſeventeenth year of King* John, *and mentioned (among others) by* Matthew Paris.

And to what yet amounted the matter of all theſe Grants, but what the Kings themſelves were bound before to obſerve, by their Coronation Oaths, as the antient fundamental Laws or Cuſtoms of this Land? This we may find in Mr. Lambard's *Tranſlation of the Saxon Laws, from the time of King* Ina, *who began* anno 712; *to* Hen. 1. *who began* 1100. *Amongſt the Saxons, King* Alfred *is reputed the moſt famous and learned Compiler of our Laws, which were ſtill handed along from one King to another, as the unalterable Cuſtoms of the Kingdom. In the* 17th *chapter of* Edward *the Confeſſor's Laws, The mention of the duty of a King (which, if not performed,* nec nomen Regis in eo conſtabit) *is remarkable. And Mr.* Lambard *tells us, that even* William *the Conqueror, did ratifie and obſerve the ſame Laws that his kinſman* Edward *the Confeſſor did, as obliged by his Coronation Oath.*

So then, neither the great Charter in King John's *time, nor that of* 9. Hen. 3. *were properly a new Body of Law, but a Declaration of the antient fundamental Laws, Rights and Liberties of this Nation, in Britiſh, Saxon, Daniſh and Norman times, before. This,* Cook *in his Proem to the ſecond part of his Inſtitutes, obſerves; where he notes alſo, that this Charter is not called great, for quantity of words,*

(a ſheet of Paper will contain it) but for the great importance and weight of its matter.

Through the advice of Hubert de Burgo *Chief Juſtice of* England, Edward *the firſt, in the eleventh year of his Reign, did, in a Council held at* Oxford, *unjuſtly cancel this great Charter, and that of Foreſt:* Hubert *therefore was juſtly ſentenc'd according to Law, by his Peers, in open Parliament. Then,* 25 Ed. 1. *The Statute, called,* Confirmationes Chartarum *was made, in the firſt chapter whereof, the* Mag. Charta *is peculiarly called the Common Law.* 25. Ed. 1. *cap.* 2. Any Judgment given contrary to the ſaid Charter, is to be undone and holden for naught *And cap.* 4. Any that by word, deed, or counſel, go contrary to the ſaid Charter, are to be excommunicated by the Biſhops; and the Arch-Biſhops of *Canterbury* and *York* are bound to compel the other Biſhops to denounce ſentence accordingly, in caſe of their remiſneſs or neglect.

The next famous ſticklers to Hubert de Burgo, *for Arbitrary Domination, were the two* Spencers, *father and ſon, by whoſe raſh and evil counſel (ſayes* Cook) Edward *the ſecond was ſeduced to break the Great Charter, and they were baniſhed for their pains.*

By theſe paſſages we may obſerve, how the People would ſtill be ſtruggling (in and by their Repreſentatives) for their Legal Rights and Juſt Liberties; to obviate the Encroachers whereof, they procured ſeveral new Ratifications of their old Laws, which were indeed in themſelves unrepealable, even by Parliaments, if they will act as men, and not contradict the Law of their own Reaſon, and of the common Reaſon of all mankind.

By 25 Ed. 1. *cap.* 1. *Juſtices, Sheriffs, Majors, and other Miniſters, that have the Laws of the Land to guide them, are required to allow the ſaid Charter to be pleaded in all its points, and in all cauſes that ſhall come before them in Judgment.*

This is a clauſe (ſayes Cook) *worthy to be written in letters of gold;* That the Laws are to be the Judges guides, *(and therefore not the Judges, the guides of the Laws, by their arbitrary gloſſes) which never yet miſguided any that certainly knew and truly followed them. In conſonancy herewith, the Spaniard ſayes, Of all the three learned Profeſſions, The Lawyer is the only letter'd man, his buſineſs and duty being to follow the plain literal conſtruction of the Law, as his guide, in giving Judgment. Pretence of myſtery here, carries in the bowels of it, intents, or at leaſt a deep ſuſpition of arbitrary domination. The mind of the Law is not ſubject to be clouded, diſturbed or perverted*

by paſſion or intereſt. 'Tis far otherwiſe with Judges; therefore 'tis fitter and ſafer the Law ſhould guide them, than they the Law. Cook *on the laſt mentioned Statute affirms, That this great Charter, and the Charter of Foreſt, are properly the Common Law of this Land, or the Law that is common to all the People thereof.*

2 Ed. 3. *cap.* 8. Exact care is taken, that no Commands by the Great or Little Seal, ſhall come to diſturb or delay Common Right. Or, if ſuch Commands come, the Juſtices are not thereby to leave to do Right, in any point. *So* 14 Ed. 3. 14. 11 Ric. 2. 10. *The Judges Oath*, 18 Ed. 3. 7, *runs thus*:

If any force come to diſturb the execution of the Common Law, ye ſhall cauſe their bodies to be arreſted and put into Priſon. Ye ſhall deny no man Right by the King's Letters, nor counſel the King any thing that may turn to his dammage or diſheriſon.

The late King in his Declaration at Newmarket, 1641, *acknowledged the Law to be the Rule of his Power. And his Majeſty that now is, in his Speech to both Houſes, the 19th of* May *laſt, ſaid excellently,* The good old Rules of Law are our beſt ſecurity.

The Common Law then, or Liberties of England, *comprized in the* Magna Charta *and the Charter of Foreſt, are rendred as ſecure, as authentick words can ſet them, from all Judgments or Precedents to the contrary in any Courts, all corrupting advice or evil counſel of any Judges, all Letters or Countermands from the Kings Perſon, under the Great or Privy Seals; yea, and from any Acts of Parliament it ſelf, that are contrary thereunto. As to the Judges, no queſtion, they well know the ſtory of the 42 corrupt Judges, executed by King* Alfred, *as alſo of* Treſillian, Belknap, *and many others ſince.*

By 11 Hen. 7. *cap.* 1. They that ſerve the King in his Wars, according to their duty of Allegiance, for defence of the King and the Land, are indempnified; If againſt the Land, and ſo not according to their Allegiance, the laſt clauſe of that chapter ſeems to exclude them from the benefit of this Act.

6 Hen. 8. 16. Knights and Burgeſſes of Parliament are required not to depart from the Parliament, till it be fully finiſhed, ended or prorogued.

28 Ed. 3. *cap* 3. No man is to be impriſoned, diſherited, or put to death, without being heard what he can ſay for himſelf.

4 Ed. 3. 14. *and* 36 Ed. 3. 10. A Parliament is to be holden every year, or oftner if need be.

1 Ric. 3. *cap.* 2. The ſubjects of this Realm are not to be charged with any new impoſition, called a *Benevolence.* 37 Ed.

37 Ed. 3. *c.* 18. All thoſe that make ſuggeſtions againſt any man to the King, are to be ſent with their ſuggeſtions before the Chancellor, Treaſurer, and his grand Council, and there to find ſurety that they will purſue their ſuggeſtions; and are to incur the ſame pain, the party by them accuſed ſhould have had, if attained, in caſe the ſuggeſtion be found evil, or falſe.

21 Jacobi, *cap.* 3. All Monopolies and Diſpenſations, with Penal Laws, are made void, as contrary to the great Charters.

Theſe quotations of ſeveral Statutes, as Ratifications and Reſtorers of the Laws of the Land, are prefixed to the following Diſcourſes and Pleas of this Sufferer, as certain, ſteady, unmovable Land-marks, to which he oft relates. The rouling Seas have other Laws, peculiar to themſelves, as Cook *obſerves* (*on that expreſſion, Law of the Land*) *in his Comment on the* 29*th Chapter of* Magna Charta. *Offences done upon the High Sea, the Admiral takes conuſance of, and proceeds by the Marine Law.*

But have thoſe ſteady Land-marks, though exactly obſerved and never ſo pertinently quoted and urged by this Sufferer, failed him, as to the ſecuring of his Life? 'Tis becauſe we have had Land-floods *of late; Tumults of the People, that are compared to the* raging Seas, *Pſal.* 65. 7.

The firſt Paper of this deceaſed Sufferer, towards the defence of his Cauſe and Life, preparatory to the Tryal, (as the foundation of all that follows) before he could know how the Indictment was laid, (and which alſo a glance back to any crime of Treaſon ſince the beginning of the late War, that the Attorney General reckoned him chargeable with, ſhews to be very requiſit) take as followeth.

Memorandums touching my Defence.

THe Offence objected againſt me, is *levying War*, within the Statute 25 *Ed.* 3. and by conſequence, a moſt high and great failer in the duty which the Subject, according to the Laws of *England*, ſtands obliged to perform, in relation to the Imperial Crown and Soveraign Power of *England*.

The crime, if it prove any, muſt needs be very great, conſidering the circumſtances with which it hath been accompaned: For it relates to,

and takes in a ſeries of publick action, of above twenty years continuance. It took its riſe and had its root in the being, Authority Judgment, Reſolutions, Votes and Orders of a Parliament, and that, a Parliament not onely authorized and commiſſionated in the ordinary and cuſtomary way, by his Majeſties Writ of Summons, and the Peoples Election and Deputation, ſubject to Adjournment, Diſcontinuance, and Diſſolution, at the King's will; but which by expreſs Act of Parliament, was conſtituted in its continuance and exerciſe of its Power free from that ſubjection, and made therein wholly to depend upon their own will, to be declared in an Act of Parliament, to be paſſed for that purpoſe, when they ſhould ſee cauſe. To ſpeak plainly and clearly in this matter; That which is endeavoured to be made a Crime and an Offence of ſuch an high nature in my perſon, is no other than the neceſſary and unavoidable Actings of the Repreſentative Body of the Kingdom, for the preſervation of the good People thereof, in their allegiance and duty to God and his Law, as alſo from the imminent dangers and deſtruction threatned them, from God's and their own Enemies.

This made both Houſes in their *Remonſtrance* (*May* 26. 1642.) proteſt; *If the Maligvant ſpirits about the King, ſhould ever force or neceſſitate them to defend their Religion, the Kingdom, the Priviledges of Parliament, and the Rights and Liberties of the Subjects, with their Swords; The Blood and Deſtruction that ſhould enſue thereupon, muſt be wholly caſt upon their account, God and their own conſciences telling them, that they were clear; and would not doubt, but that God and the whole world would clear them therein.*

In his Majeſties *Anſwer* to the *Declaration* of the two Houſes, (*May* 19. 1642.) he acknowledgeth his going into the Houſe of Commons to demand the five Members, was an errour: And that was it, which gave the Parliament the firſt cauſe to put themſelves in a poſture of defence, by their own Power and Authority, in commanding the Trained-Bands of the City of *London*, to guard and ſecure them from Violence, in the diſcharge of their Truſt and Duty, as the two Houſes of Parliament, appointed by Act, to continue, as above-mentioned.

The next cauſe was, his Majeſties raiſing Forces at *York*, (under pretence of a Guard) expreſſed in the humble Petition of the Lords and Commons, (*May* 23. 1642.) wherein they beſeech his Majeſty to diſband all ſuch Forces, and deſiſt from any further deſigns of that nature, otherwiſe they ſhould hold themſelves bound in duty towards God, and the Truſt repoſed in them by the People, and the Fundamental

Laws

Laws and Conſtitutions of this Kingdom, to employ their care and utmoſt power, to ſecure the Parliament, and preſerve the peace and quiet of the Kingdom.

May 20. 1642. The two Houſes of Parliament gave their Judgment, in theſe Votes.

Firſt, *That it appears, that the King (ſeduced by wicked Counſel) intends to make War againſt the Parliament, who in all their Conſultations and Actions have propoſed no other end to themſelves, but the Care of his Kingdoms, and the performance of all Duty and Loyalty to his Perſon.*

Secondly, *That whenſoever the King maketh War upon the Parliament, it is a breach of Truſt repoſed in him by his People, contrary to his Oath, and tending to the diſſolution of this Government.*

Thirdly, *That whoſoever ſhall ſerve or aſſiſt him in ſuch Wars, are Traytors by the fundamental Laws of this Kingdom, and have been ſo adjudged by two Acts of Parliament, and ought to ſuffer as Traitors.*

Die Jovis, Octob. 8. 1642, In the Inſtructions agreed upon by the Lords and Commons about the Militia, They declare, *That the King (ſeduced by wicked Counſel) hath raiſed War againſt the Parliament, and other his good Subjects.*

And by the Judgment and Reſolution of both Houſes, bearing date *Aug.* 13. 1642, upon occaſion of his Majeſties *Proclamation* for ſuppreſſing the preſent Rebellion under the Command of *Robert* Earl of *Eſſex*, They do unanimouſly publiſh and declare, *That all they who have adviſed, declared, abetted, or countenanced, or hereafter ſhall abet and countenance the ſaid* Proclamation, *are Traytors and Enemies to God, the King and Kingdom, and guilty of the higheſt degree of Treaſon that can be committed againſt the King and Kingdom, as that which invites his Majeſties Subjects to deſtroy his Parliament, and good People, by a Civil War; and by that means, to bring ruine, confuſion and perpetual ſlavery upon the ſurviving part of a theſe wretched Kingdom.*

The Law is acknowledged by the King, to be the *onely Rule*, by which the People can be juſtly governed; and that, as it is his duty, ſo it ſhall be his perpetual, vigilant care, to ſee to it: Therefore he will not ſuffer either or both Houſes by their Votes, without or againſt his Conſent, to enjoyn any thing that is forbidden by the Law, or to forbid any thing that is enjoyned by the Law.

The King does aſſert in his Anſwer to the Houſes Petition, (*May* 23. 1642.) *That He is a part of the Parliament, which they take upon*

upon them to defend and ſecure; and that his Prerogative is a part of, and a defence to the Laws of the Land.

In the Remonſtrance of both Houſes, (*May* 26. 1642.) They do aſſert; *That if they have made any Precedents this Parliament, they have made them for poſterity, upon the ſame or better grounds of Reaſon and Law, than thoſe were, upon which their Predeceſſors made any for them*; and do ſay, *That as ſome Precedents ought not to be Rules for them to follow, ſo none can be limits to bound their Proceedings, which may and muſt vary, according to the different condition of times.*

And for the particular, with which they were charged, of ſetting forth Declarations to the People who have choſen and entruſted them with all that is deareſt to them, if there be no example for it in former times; They ſay, *it is becauſe there never were ſuch Monſters before, that attempted to diſaffect the People towards a Parliament.*

They further ſay; *His Majeſties Towns are no more his care than his Kingdom, nor his Kingdom than his People, who are not ſo his own, that he hath abſolute power over them, or in them, as in his proper Goods and Eſtate; but fiduciary, for the Kingdom, and in the paramount right of the Kingdom.* They alſo acknowledge the Law, to be the ſafeguard and cuſtody of all publick and private Intereſts. They alſo hold it fit, to declare unto the Kingdom, (whoſe Honour and Intereſt is ſo much concerned in it) what is the Priviledge of the great Council of Parliament, herein; and what is the Obligation that lies upon the Kings of this Realm, as to the paſſing ſuch Bills as are offered to them by both Houſes, in the name, and for the good of the whole Kingdom, whereunto they ſtand engaged, both in Conſcience and Juſtice, to give their Royal Aſſent.

Firſt, *In Conſcience*; in reſpect of the Oath that is, or ought to be taken by them, at their Coronation, as well to confirm by their Royal Aſſent, all ſuch good Laws as the People ſhall chuſe, (whereby to remedy ſuch inconveniencies as the Kingdom may ſuffer) as to keep and protect the Laws already in being.

The form of the *Oath* is upon Record, and aſſerted by Books of good authority. Unto it relation is had, 25 *Ed.* 3. entituled, *The Statute of Proviſors of Benefices.*

Hereupon, The ſaid Commons prayed our ſaid Lord the King, (ſith the Right of the Crown of *England*, and the Law of the ſaid Realm, is ſuch, that upon the miſchiefs and dammages which happen to this Realm, he ought and is bound by his Oath, with the accord

of

of his People in Parliament, to make Remedy and Law, for the removing thereof) That it may pleaſe him to ordain Remedy.

This Right, thus claimed by the Lords and Commons, The King doth not deny, in his Anſwer thereunto.

Secondly, *In Juſtice* the Kings are obliged as well as in *Conſcience*, in reſpect of the Truſt repoſed in them, to preſerve the Kingdom by the making of new Laws, where there ſhall be need, as well as by obſerving of Laws already made; a Kingdom being many times as much expoſed to ruine for want of a new Law, as by the violation of thoſe that are in being.

This is a moſt clear Right, not to be denyed, but to be as due from his Majeſty to his People, as his Protection. In all Laws framed by both Houſes, as *Petitions of Right*, they have taken themſelves to be ſo far Judges of the Rights claimed by them, That when the King's Anſwer hath not been in every point, fully according to their deſire, they have ſtill inſiſted upon their Claim, and never given it over, till the Anſwer hath been according to their demand, as was done in the late *Petition of Right*, 3. Caroli.

This ſhews, the two Houſes of Parliament are *Judge* between the King and the People in queſtion of Right, as in the Caſe alſo of *Ship-money* and other illegal Taxes; and if ſo, why ſhould they not alſo be Judge in the Caſes of the Common Good and Neceſſity of the Kingdom, wherein the Kingdom hath as clear a Right to have the benefit and remedy of the Law, as in any other matter, ſaving Pardon and Grants of Favour?

The Malignant Party are they, that not only neglect and deſpiſe, but labour to undermine the Law, under colour of maintaining it. They endeavour to deſtroy the Fountain and Conſervators of the Law, the *Parliament*. They make other Judges of the Law, than what the Law hath appointed. They ſet up other Rules for themſelves to walk by, than ſuch as are according to Law; and diſpence with the Subjects obedience, to that which the Law calls Authority, and to their Determinations and Reſolutions, to whom the Judgment doth appertain by Law: Yea, though but private perſons, they make the Law to be their Rule, according to their own underſtanding only, contrary to the Judgment of thoſe that are the competent Judges thereof.

The King aſſerts, That the Act of Sir *John Hotham* was *levying War againſt the King*, by the letter of the Statute, 25 *Ed.* 3. cap. 2.

The Houſes ſtate the Caſe, and deny it to be within that Statute; ſaying, If the letter of that Statute be thought to import this; That

no War can be levied againſt the King, but what is directed and intended againſt his Perſon; Or, that every levying of Forces for the defence of the King's Authority, and of his Kingdom, againſt the perſonal Commands of the King, oppoſed thereunto, (though accompanied with his preſence) is Treaſon, or levying War againſt the King; Such Interpretation is very far from the ſenſe of that Statute, and ſo much the Statute it ſelf ſpeaks, beſide the authority of Book-caſes. For if the clauſe of levying War had been meant only againſt the King's Perſon, what need had there been thereof, after the other branch in the ſame Statute, of compaſſing the King's death, which would neceſſarily have implied this? And becauſe the former doth imply this, it ſeems not at all to be intended, at leaſt not chiefly, in the latter branch, but the levying War againſt his Laws and Authority; and ſuch a levying War, though not againſt his Perſon, is a levying War againſt the King; whereas the levying of Force againſt his perſonal Commands, though accompanied with his Preſence, and not againſt his Laws and Authority, but in the maintenance thereof, is no levying of War againſt the King, but for him, eſpecially in a time of ſo many ſucceſſive plots and deſigns of Force againſt the Parliament and Kingdom, of probable Invaſion from abroad, and of ſo great diſtance and alienation of his Majeſties affections from his Parliament and People, and of the particular danger of the Place and Magazine of *Hull*, of which the two Houſes ſitting, are the moſt proper Judges.

In proclaiming Sir *John Hotham* Traitor, they ſay, The breach of the Priviledge of Parliament was very clear, and the ſubverſion of the Subjects common Right. For though the Priviledges of Parliament extend not to theſe caſes, mentioned in the Declaration of Treaſon, Felony, and breach of the Peace, ſo as to exempt the Members of Parliament from Puniſhment, or from all manner of Proceſs and Tryal, yet it doth priviledge them in the way and method of their Tryal and Puniſhment, and that the Parliament ſhould firſt have the Cauſe brought before them, that they may judge of the Fact, and of the grounds of their Accuſation, and how far forth the manner of their Tryal may or may not concern the Priviledge of Parliament: Otherwiſe, under this pretext, the Priviledge of Parliament in this matter, may be ſo eſſentially broken, as thereby the very Being of Parliaments may be deſtroyed. Neither doth the ſitting of a Parliament ſuſpend all or any Law, in maintaining that Law, which upholds the Priviledge of Parliament, which upholds the Parliament, which upholds the Kingdom.

They

They further assert; That in some sense, they acknowledge the *King* to be the only person, against whom Treason can be committed, that is, as he is *King*, and that Treason which is against the Kingdom, is more against the *King*, than that which is against his Person; because he *is King*: For Treason is not Treason, as it is against him *as a man*, but *as a man that is a King*, and as he hath, and stands in that relation to the Kingdom, entrusted with the Kingdom, and discharging that Trust.

They also avow, That there can be no competent Judge of this or any the like case, but a *Parliament*; and do say, that if the wicked Counsel about the King could master this Parliament by force, they would hold up the same power to deprive us of all Parliaments, which are the ground and pillar of the Subjects Liberty, and that which only maketh *England* a free Monarchy.

The Orders of the two Houses carry in them *Law for their limits, and the Safety of the Land for their end.* This makes them not doubt but all his Majesties good Subjects will yeeld obedience to his Majesties Authority, signified therein by both Houses of Parliament: for whose encouragement, and that they may know their Duty in matters of that nature, and upon how sure a ground they go, that follow the Judgment of Parliament for their guide; They alledge the true meaning and ground of that Statute, 11. *Hen. 7. cap.* 1. printed at large in his Majesties Message, *May* 4; This Statute provides, that none that shall attend upon the King and do him true service, shall be attainted, or forfeit any thing.

What was the scope of this Statute?

Answ. To provide, that men should not suffer as Traitors for serving the King in his Wars, according to the duty of their Allegiance. But if this had been all, it had been a very needless and ridiculous Statute. Was it then intended (as they seem to make it, that print it with his Majesties Message) that those should be free from all crime and penalty, that should follow the King and serve him in War, in any case whatsoever, whether it were for or against the Kingdom or the Laws thereof? That cannot be: for that could not stand with the duty of their Allegiance, which, in the beginning of this Statute, is expressed to be, *to serve the King for the time being in his Wars, for the defence of him and the Land.* If therefore it be against the Land, (as it must be, if it be against the Parliament, the Representative Body of the Kingdom) it is a declining from the duty of Allegiance, which this Statute supposes may be done, though men should follow the Kings

Perſon in the War. Otherwiſe, there had been no need of ſuch a *Proviſo* in the end of the Statute, that none ſhould take benefit thereby, that ſhould decline from their Allegiance.

That therefore which is the Principal Verb in this, is *the ſerving of the King for the time being*, which cannot be meant of a *Perkin Warbeck*, or any that ſhould call himſelf *King*, but ſuch a one, as (whatever his Title might prove, either in himſelf or in his Anceſtors) ſhould be received and acknowledged for ſuch, by the Kingdom, the Conſent whereof cannot be diſcern'd but by Parliament; the Act whereof, is the Act of the whole Kingdom, by the perſonal Suffrage of the Peers, and the Delegate Conſent of the Commons of *England*. *Henry* 7th therefore, a wiſe Prince, to clear this matter of conteſt, happening between Kings *de facto* and Kings *de jure*, procured this Statute to be made, *That none ſhall be accounted a Traitor for ſerving in his Wars, the King for the time being*; that is, him that is for the preſent allowed and received by the Parliament in behalf of the Kingdom. And as it is truly ſuggeſted in the Preamble of the Statute; It is not agreeable to reaſon or conſcience, that it ſhould be otherwiſe, ſeeing men ſhould be put upon an impoſſibility of knowing their duty, if the Judgment of the higheſt Court ſhould not be a Rule to guide them. And if the Judgment thereof is to be followed, when the queſtion is, *who is King?* much more, when the queſtion is, *what is the beſt ſervice of the King and Kingdom?* Thoſe therefore that ſhall guide themſelves by the Judgment of Parliament, ought (what ever happen) to be ſecure and free from all account and penalties, upon the ground and equity of this Statute.

To make the Parliament countenancers of Treaſon, they ſay, is enough to have diſſolv'd all the bands of ſervice and confidence between his Majeſty and his Parliament, of whom the Law ſayes, a diſhonourable thing ought not to be imagined.

This Concluſion then is a clear Reſult from what hath been argued; That in all Caſes of ſuch difficulty and unuſualneſs, happening by the over-ruling Providence of God, as render it impoſſible for the Subject to know his duty, by any known Law or certain Rule extant, his relying then, upon the Judgment and Reaſon of the whole Realm, declared by their Repreſentative Body in *Parliament*, then ſitting, and adhering thereto, and purſuing thereof, (though the ſame afterwards be by ſucceeding Parliaments, judged erroneous, factious and unjuſt) is moſt agreeable to right Reaſon and good Conſcience; and in ſo doing, all perſons are to be free and ſecure from all Account

and

and Penalties, not only upon the ground and equity of that Statute, 11 *Hen.* 7. but according to all Rules of Juſtice, natural or moral.

The day of Arraignment, being Monday June 2. 1662.

Reader, The beſt account thou canſt yet be furniſhed with, as to this dayes proceedings in Court, is, as followeth.

SIR *Henry Vane* was the laſt Term, indicted of High Treaſon, before the *Middleſex* Grand Jury, and the Bill being found by them, he was upon Monday the ſecond of *June* this Term, arraigned, to this effect.

That you as a falſe Traitor againſt his moſt excellent Majeſty King Charles the ſecond, *your ſupream and natural Lord, not having the fear of God before your eyes, and withdrawing that your duty and allegiance, which a true Subject ought to have and bear to our ſaid Leige and ſovereign Lord, thirteenth of* May, *in the eleventh year of our ſaid ſovereign Lord the King, at the Pariſh of St.* Martins *in the fields in the County of* Middleſex, *did compaſs and imagine the Death of our ſaid ſovereign Lord the King, and the ancient frame of Government of this Realm, totally to ſubvert and keep out our ſaid ſovereign Lord from the exerciſe of his Regal Government; and the ſame the better to effect, the ſaid Sir* Henry Vane *the ſaid thirteenth day of* May, *in the ſaid eleventh year, &c. at St.* Martins *aforeſaid, together with other falſe Traitors, to the Jurors unknown, did traiterouſly and maliciouſly aſſemble and ſit together, and then and there conſulted to bring the King unto deſtruction, and to hold him out from the exerciſe of his Regal Authority, and then and there uſurped the Government, and appointed Officers, to wit, Colonels and Captains of a certain Army, raiſed againſt the King, againſt the Peace of our ſovereign Lord the King his Crown and Dignity, and contrary to the form of the Statute in that caſe made and provided.*

And the better to effect this, the twentieth of December, *in the ſaid eleventh year, with a multitude, to the number of a thouſand perſons, to the Jurors unknown, in warlike manner aſſembled, and arrayed with Guns, Trumpets, Drums, &c. did levy War againſt the Peace, &c. and contrary to the form of a Statute.*

Which being read, he prayed to have it read a ſecond time, which was granted him. He then prayed to have it read in Latine, which

all the Court denyed, and *Keeling* the King's Serjeant ſaid, That though all Pleas and Entries are ſet down on Record in Latine, yet the agitations of Cauſes in Court, ought to be in Engliſh.

The Priſoner moved ſeveral Exceptions to the Indictment, as that the 25. *Ed.* 3. is not purſued; that he had levied no ſuch force as amounted to a levying of War; Alſo, the place in which, perſons with whom, are both uncertain; and the particular acts of levying War, being not ſet forth, he thought therefore the Indictment was *inſufficient*. Alſo, he ſaid, here is a long time of Action for which I am charged, and I may be concern'd for what I acted as a Member in that ſovereign Court of *Parliament*, and if any thing concerns the Juriſdiction of that Court, I ought not to be judged here; at which the Court and King's Counſel took great offence.

He ſaid alſo; There hath been an Act of General Pardon, ſince that time, whereby all Treaſons are put in utter oblivion, and though Sir *Henry Vane* were excepted, yet none conſent that he was that Sir *Henry Vane*. But the King's Counſel ſaid, If he would plead that Plea, they would joyn that Iſſue with him, if he pleaſed, which if it ſhould be found againſt him, it would be too late to plead, *not guilty*.

But the Court ſaid, in favour of life, a man may plead a double Plea, and give in his Exception, and plead over to the Felony or Treaſon, *not guilty*.

But as to the Exceptions taken to the Indictment, they gave little heed to them, but preſſed him to plead or confeſs.

Whereupon he pleaded, *Not guilty*; and had four dayes, to wit, till Friday next, for his Tryal.

From another hand, take, as followeth.

The Priſoner did much preſs for Counſel to be allowed him, to adviſe with about any further Exceptions to the Indictment, beſides thoſe by him exhibited, and to put all into form, according to the cuſtomary proceedings and language of the Law, as alſo to ſpeak to them at the Bar, on his behalf, he not being verſ'd in the punctilio's of Law-writings and Pleas. He further ſaid, That the Indictment, which ſo nearly concern'd his Life, being long, and his memory ſhort, it could not well be imagined that he ſhould upon the bare hearing it read, be able in an inſtant to find out every material Exception againſt it, in form or matter. He pleaded a good while on this account, but Counſel was finally denied him till he ſhould plead *guilty* or *not guilty*, unto which,

which, being a third time urged, he pleaded *Not guilty*; The Court having aſſured him beforehand, that after pleading, Counſel ſhould be aſſigned him, which yet never was performed.

Here followeth a Tranſcript of the Priſoners own Papers, containing certain *Memorandums* pleadable upon his Arraignment.

Memorandums for, and towards my Defence.

Upon hearing the Indictment read, and before pleading.

FIrſt, To lay before the Court the impoſſibility that he humbly conceives, is already in view, as to the having any ſuch indifferent and equal Tryal, as the Law intends him, and doth require and command on the behalf of all the free-People of *England*. The Riſe for this Conception he takes from what hath been already done in relation to the Priſoner himſelf, unheard, unexamined, and yet kept cloſe Priſoner for near two whole years. This he ſhall leave to the Judgment of the Court, after that he hath made known the particulars thereof unto them, as neceſſary to precede the thing demanded of him, in pleading *guilty*, or *not guilty*.

Secondly, What is the indifferency which the Law requires and appoints throughout, as well in matters that go before the Tryal, as in the proceedings at the Tryal it ſelf?

Before the Tryal, and in the firſt ſtep to it, which is the keeping and ſecuring his perſon, *Magna Charta* is clear, and gives this Rule, cap 29. *Nullus liber homo capiatur, &c.*

No free-man ſhall be taken or impriſoned, or be diſſeiſed of his free-hold or liberties, or free-cuſtoms, or be outlawed or exiled, or any otherwiſe deſtroyed; Nor we will not paſſe upon him, nor condemn him, but by lawful Judgement of his Peers, or by the Law of the Land: We will ſell to no man, we will not deny or defer to any man either Juſtice or Right.

Out of this Chapter, as out of a root (ſaith Sir *Edward Cook*) do many fruitful branches of the Law of *England* ſpring. It contains nine branches; ſome whereof I ſhall inſiſt upon in my Caſe.

Firſt, That no man be taken or impriſoned but *per Legem Terræ*, that is, by the Common Law or Cuſtom of *England*; which words, *per Legem Terræ*, though put laſt, refer to all the precedent branches.

Secondly, The Goods of any Offender cannot regularly be taken and

and ſeized to the King's uſe before Conviction, nor be Inventoried, nor the Town charged therewith, before the owner be indicted of Record.

Thirdly, No man ſhall be exiled or baniſhed out of his Country, nor be in any ſort deſtroyed but by the verdict of his Peers.

This appears by *Bracton* and other ancient Writers, quoted by *Cook*, in the third part of his *Inſtitutes*, fol. 228.

Upon the whole matter ſaith *Cook*, theſe two Concluſions are manifeſtly proved.

Firſt, That before Indictment, the Goods or other things of any Offender cannot be ſearched, inventoried or in any ſort ſeized, nor after Indictment, ſeized, removed, or taken away, before Conviction or Attainder.

Secondly, That the begging of the Goods or Eſtate of any Delinquent, accuſed or indicted of any Treaſon, Felony, or other offence, before he be convicted and attainted, is utterly unlawful; *Stat. Ri.* 1. *cap.* 3.

And beſides, it maketh the proſecution againſt the Delinquent, more precipitant, violent and undue, than the quiet and equal proceedings of the Law and Juſtice would permit: Or elſe, by ſome under-hand Agreement, ſtops or hinders the due courſe of Juſtice, and diſcourageth both Judge, Juror and Witneſs to do their duty.

Thirdly, The Judges are not to give ſo much as their Opinion before-hand, concerning the Offence, whether it prove that Offence in that Caſe.

Cook in the chap. of *Petty Treaſon*, fol. 29. expreſly ſaith; *And to the end the Tryal may be the more indifferent, ſeeing the ſafety of the Priſoner conſiſts in the indifferency of the Court, the Judges ought not to deliver their Opinions before-hand, of any Criminal Caſe, that may come before them judicially.* And he there cites *Humphrey Staffords* Caſe that Arch Traitor, in which *Huſſey* Chief Juſtice, beſought *Hen.* 7. not to demand of them their Opinions before-hand. And in the 4th of his *Inſtitutes*, in the chap. of the *High Court of Parliament*, fol. 37, he fully ſhews the evil of asking the Judges Opinions before-hand.

But inſtead of this, The Judges being aſſiſtant in the Lords houſe, when all Acts of Parliament paſſe, and whoſe Advice is taken in them, have (as appears by what is declared in the ſaid Acts) prejudg'd by their Opinions and the Opinions of the Parliament before-hand, the merit of the Cauſe that now appears to be put upon the Iſſue in my Tryal,

Tryal. Hereby the Judges are rendred *ex parte*, and the indifferency the Law requires, impoſſible to be afforded.

Nor is this all; but by the Rules declared in the *Act of Indempnity*, all are diſenabled to plead, or make uſe of the Ordinances, Orders and Votes of both, or either Houſes of Parliament, that may have occaſion thereof; and then by excepting the Priſoner and his fellow out of the ſaid Act, and all benefit thereby, a door is left open to Arraign, bring to Tryal and Sentence the whole Cauſe from the beginning to the ending, in the perſon of the Priſoner, and at the ſame time, deprive him of all means and poſſibility of Juſtification and Defence.

Fourthly, It is obſervable how early hard meaſure appeared in the way wherein the Priſoner became excepted out of the Act of Indempnity, when the Commons, his proper Judges, declared him in their thoughts, not fit to be endangered in the point of Life; yet unto the Judgment of the Lords, (that ought not to judge Commoners, unbrought before them by the Commons, much leſs, in oppoſite Judgement to the Commons) The Commons were neceſſitated to yeeld, leſt otherwiſe the Act of Indempnity to the whole Nation ſhould ſtop upon this diſpute and eſſential difference between the two Houſes; A Competition, eaſily over-ruled; although (as it proves by the ſequel) That Act of *Indempnity* is like to become *felo de ſe*, or a deſtroyer of it ſelf, if your Lordſhips ſhall conceive your ſelves at liberty, (notwithſtanding that Act) not only to bring anew into memory upon the ſtage, the ſtate of all the paſſed differences, from firſt to laſt, but to try and judge the merit of them in my perſon, and therein call in queſtion the validity of that whole Act, and make void the benefit intended by it, in caſe the War undertaken and managed by both or either of the Houſes of Parliament, be judged unlawful, and within the Statute of 25. *Ed.* 3. For this adjudges all the People of *England* morally guilty of the evil of a ſin and offence againſt the Law of Nature, which once done, what ever promiſed Indempnity be granted for the preſent, the Evil of the Action remaining upon Record; not only to the Infamy of the whole People of *England*, but their future danger, upon pretence they have forfeited the very Indempnity granted.

Fifthly, The length of time taken to ſearch out matter againſt the Priſoner, and the undue practices and courſes to find out Witneſſes, do further evidence how unlike the Priſoner is to have an equal and indifferent Tryal. He doubts not, this will appear in his two years cloſe Impriſonment, (ſix months whereof was Baniſhment) during which time,

time, he was never ſo much as once examined, or had any queſtion put to him, whereby he might conjecture wherefore he was committed to Priſon, any further than was expreſſed in the Warrants of Commitments.

Now theſe were ſo general, that nothing certain or particular could be gathered out of them. But upon the received opinion, that he was excepted out of the Act of Indempnity, and in the ſence of both Houſes, a great Delinquent, his Eſtate was attempted to be inventoried, his Rentals demanded, his Rents were actually ſeized in the Tenants hands, and they forbidden to pay them. His very Courts were prohibited by Officers of great Perſonages, claiming the Grant of the Eſtate, and threatning his Officers from doing their duty. By theſe kind of undue proceedings, the Priſoner had not wherewithal to maintain himſelf in Priſon, and his Debts, to the value of above ten thouſand pounds, were undiſcharged, either Principal or Intereſt. The hopes of private lucre and profit hereby, was ſuch, in the Tenants and other perſons, ſought out for far and near, to be Witneſſes, that it is no wonder at laſt, ſomething by way of Charge comes to be exhibited.

And as this is the Caſe of the Perſon before his appearance at this Bar, with reſpect to the foreſaid unequal proceedings towards him, and the great diſadvantages put upon him, and all theſe, as it were, in a continued ſeries of Deſign; ſo, the matters and things themſelves with which it now appears he is charged in the Indictment, make his Caſe ſtill very extraordinary and unuſual, involving him in difficulties that are inſuperable, unleſs God's own immediate Power do ſhew it ſelf in working his deliverance.

The things done, are for many years paſt, in a time of Differences between King and Parliament, and Wars enſuing thereupon. Many extraordinary Changes and Revolutions in the State and Government were neceſſitated in the courſe of God's Providence, for wiſe and holy ends of his, above the reach of humane wiſdom.

The Authority by which they are done, is prejudged. The Orders, Votes and Reſolutions of Parliament are made uſeleſs, and forbidden to be produced. Hereby, all manner of defence is taken away from the Priſoner; and that which was done according to Law, as the Laws of thoſe times were, is endeavoured to be made unlawful, and ſo the perſons, acting according to ſuch Laws, are brought to puniſhment.

The Judges (as hath been ſhewed) are foreſtalled in their Judgements, by the declared ſence of Parliaments, given *ex poſt facto*.

The

The Jurors are put upon difficulties never known before, for twelve Commoners to judge the Actions of all the Commons of *England*, in whom they are included, as to whose Judgment is the right, the one or the others; and whether their Repreſentatives be truſty.

The Party indicted is under an incapacity to bring Witneſſes, as well from the nature of the place wherein the things were done, within the Walls of the Houſe, as from the ſhortneſs of time, having heard nothing of his Charge, and being kept a cloſe Priſoner, to the laſt day. His Solicitors and perſons imployed in his Law-buſineſſes, were alſo reſtrained from him.

It is alſo moſt evident, that the matters for which he is queſtioned, being the Product of ſo many years Agitations of Parliamentary Counſels and Arms, cannot be of a ſingle concern, nor be reputed as the actions of a private man, done of his own head, nor therefore come within any of the ſix Claſſes of Treaſon, contained in 25. *Ed.* 3.

It is a Caſe moſt unuſual, and never happening before in this Kingdom; yet it is alledged in the Indictment to be a levying War within that Statute, and ſo comes to have the name of *High Treaſon* put upon it, thereby (if poſſible) to deprive him of the uſe and benefit of Counſel, as alſo of competent time to prepare for his Defence, and all fitting and requiſit means for the clearing of his Innocency. Unto this, unleſs ſome remedy be afforded by the juſtice, candor and favour of this Court, it may be better for the Priſoner (for ought he yet knows) to be immediately deſtroyed by ſpecial Command (if nothing elſe will ſatisfie) without any form of Law, as one to whom Quarter, after at leaſt two years cool blood, is thought fit to be denied in relation to the late Wars. This may ſeem better, than under a colour and form of Juſtice, to pretend to give him the benefit of the Law and the King's Courts, whoſe part it is, to ſet free the Innocent, upon an Equal and Indifferent Tryal had before them, if their Cauſe will bear it: but it is very viſible beforehand, that all poſſible means of Defence are taken and withheld from him, and Laws are made *ex poſt facto*, to forejudge the merit of the Cauſe, the Party being unheard.

And when he hath ſaid all this, that as a rational man, does occur to him, and is fit for him to repreſent in all humility to the Court, he craves leave further to adde; That he ſtands at this Bar not only as a man, and a man clothed with the Priviledges of the moſt Sovereign Court, but as a Chriſtian, that hath Faith and reliance in God, through whoſe gracious and wiſe appointment, he is brought into theſe circumſtances, and unto this place at this time, whoſe Will he deſires to be

found resigned up into, as well in what He now calls him to *suffer*, as in what He hath called him formerly to *act*, for the good of his Country, and of the People of God in it. Upon this bottom (he blesses the Name of his God) he is fearless, and knows the issue will be good what ever it prove. God's strength may appear in the Prisoner's weakness; and the more all things carry the face of certain ruine and destruction unto all that is near and dear to him in this world, the more will divine deliverance and salvation appear; to the making good of that Scripture, That *he* that is content to *lose his life* in God's Cause and Way, *shall save it*, and *he that* instead thereof goes about to *save his life* upon undue terms, *shall lose it*.

Far be it therefore from me, to have knowingly, maliciously or wittingly offended the Law, rightly understood and asserted; much less, to have done any thing that is *malum per se*, or that is morally evil. This is that I allow not as I am a Man, and what I desire with stedfastness to resist, as I am a Christian. If I can judge any thing of my own Case, The true reason of the present difficulties and straits I am in, is because I have desired to walk by a just and righteous Rule in all my Actions, and not to serve the lusts and passions of men, but had rather die, than wittingly and deliberately sin against God and transgress his holy Laws, or prefer my own private Interest before the Good of the whole Community I relate unto, in the Kingdom where the lot of my residence is cast.

Here follow the chief Observables (as to matter of new Argument) on the day of his Tryal, being Friday June 6. 1662.

ON this day, the Sheriff returned forty eight Freeholders of the County of *Middlesex*. After thirty two were challenged by the Prisoner, he had a Jury of Twelve men sworn, to wit, Sir *William Roberts*, junior. Sir *Christopher Abdy*. *John Stone*. *Henry Carter*. *John Leech*. *Daniel Cole*. *Daniel Browne*. *Thomas Chelsam*. *Thomas Pitts*. *Thomas Upman*. *Andrew Bent*, and *William Smith*.

The Attorney-General's Speech to the Jury.

The Indictment is, *for traiterously imagining and intending, &c. the Death of the King*. This very imagination and compassing, &c. is Treason. Yet, forasmuch as the intentions of the heart are secret; the Law cannot take notice of them, till they are declared by Overt Act. Therefore we shall give in Evidence, That for the accomplishing of

of theſe Intentions, the Priſoner ſate with others in ſeveral Councils, or rather Confederacies, incroached the Government, levied Forces, appointed Officers, and at laſt, levied open and actual War, in the head of a Regiment. If any of theſe crimes be proved, it is ſufficient to make him guilty within this Indictment. And the open levying of War, and appearing in the head of a Regiment, is not only a Treaſon of it ſelf, but an evidence of all thoſe other Treaſons he ſtands charged with in the Indictment.

Theſe things happening before the Act of Oblivion, you will take notice of that Act, and that the Priſoner being excepted by name from the benefit of that Pardon, though he be chargeable for any crime of Treaſon ſince the beginning of the late War, yet we ſhall confine the Facts for which we charge him, to the Reign of his now Majeſty.

After the Houſe had voted the late King's Conceſſions in the Iſle of *Wight* to be a good ground for Peace, many of the Members were kept out by force, others turned out; the Peers laid aſide, and at laſt, the King murdered. The firſt thing then that we ſhall lay to the charge of the Priſoner, is, That that very day, wherein that horrid Act was committed, we find his hand and ſeal to a Warrant to the Officers of the Navie, to iſſue out Stores for a Summers Guard of the *Narrow Seas*. This was the firſt day of the Reign of his now Majeſty; and ſo he enumerated all the Particulars which he intended to charge him with, and proved them, as followeth.

1. The Warrant of the 30th of *Jan.* 48. was proved to be the hand of Sir *Henry Vane*, by *Thomas Lewis* and *Thomas Turner*, as they believe, neither of them affirming that they ſaw him write it, but knowing his hand, believed it to be ſo.

2. *Ralph Darnel*, an Under-Clerk of the Houſe of Commons, proved the Journal Book of the Houſe, and ſaid, though he will not take upon him to ſay, when Sir *Henry Vane* was there, and when he was abſent, yet he ſaid poſitively, that at what time ſoever he is ſet down in the Journal, to have acted or reported any thing, he was there. In which Book, *Febr.* 7. 1648. fol. 653, was the Order to ſet up a *Council of State*.

Fol. 684. 13th *Feb.* were the Inſtructions preſented to the Houſe, upon which the Council of State was to act.

1. The firſt was, *That you, or any four or more, are to ſuppreſs all and every perſon and perſons pretending Title to the Kingly Government of this Nation, from or by the late King*; Charles Steward, *his ſon*; *or any claiming from or by them or either of them, or any other Single Perſon whatſoever.*

This the Attorney ſaid, was in the firſt part of that Inſtruction, to deſtroy the King's Perſon, and in the ſecond part, the Kingly Government.

2. *That you, &c. are appointed to direct the Forces of this Commonwealth, for the preventing and ſuppreſſing of Tumults and Inſurrections at home, or Invaſions from abroad; and for theſe ends, to raiſe Forces, &c.*

3. That Febr. 14. 1648. fol. 695; Sir *Henry Vane* was choſen a Member of the Council of State, and acted upon theſe Inſtructions, which they proved thus; To wit,

Firſt, That Sir *Henry Vane*, as (fol. 893) 23d of *March* 1648, Reported from the Council of State, an Eſtimate of the number of Ships for the Summers Guard of the *Narrow Seas*.

Secondly, *March* 30. 1649, Sir *Henry Vane* reports from the Council of State, That ten thouſand pounds, parcel of the twenty thouſand pounds, aſſeſſed upon *South Wales* for their Delinquency, be allowed towards the ſetting out of this Fleet, for the ſervice of the Parliament; which was Ordered accordingly, and to be paid to Sir *Henry Vane*, as Treaſurer of the Navie.

Thirdly, That Sir *Hen. Vane* uſually ſate in Council, but this Deponent, being never admitted to go in, after the Council was ſate, proves, that he often ſaw him go in at the fore-door and back-door, and often continue there all the time the Council was ſitting.

William Dobbins and *Matthew Lock* ſay, That they ſeveral times ſaw Sir *Henry Vane* ſit in a Committee of the Council, in the years 1651 and 1652, which conſiſted only of Members of the Council, and particularly at the Committee for Scotiſh and Iriſh Affairs, where Sir *Henry Vane* was often in the Chair, and produced ſeveral Orders of that Committee.

Fourthly, *Febr.* 12. 1649, A new Council of State was choſen, of which Sir *Henry Vane* was one, fol. 720.

Feb. 13. 1649, All the Inſtructions of the former year were read and aſſented to.

Feb. 22. 1649. fol. 760, Sir *Henry Vane* reported the form of an Oath of *Secreſie* to be adminiſtred to every of the Members of the Council, which was, to keep all things which ſhould be tranſacted in Council, *ſecret*, and to be true and faithful to their *Inſtructions*; which the Attorney ſaid, (ſince their firſt Inſtruction was, *to ſuppreſs all perſons pretending Title from the King*) was in effect, an Oath of *Abjuration*.

Fifthly,

Fifthly, *Anno* 1652, Sir *Henry Vane* was Preſident of the Council of State, and ſeveral Warrants were produced, to wit, *May* 20. 1652, and 22d of *May* -52; to deliver to Major *Wigan*, two hundred Firelocks, and ten Drums. The other, for the delivery of five hundred Foot-Arms, for Recruit of Col. *Ingoldsbyes* Regiment; and theſe were ſubſcribed by Order of the Council, *H. Vane*, Preſident.

April 2. 1653. A Warrant of that date was produced by the Commiſſioners of the Navy, of which he was one, for furniſhing out the *Hampſhire* Frigat, with Proviſions and Ammunition for the uſe of the State.

From this time to 1659, they charge him with nothing, and then the Journal-Book was produced and atteſted by *Ralph Darnel*, wherein, *May* 7. 1659, an Order was made for appointing a *Committee of Safety* (whereof Sir *Henry Vane* was one) *That they, or any four or more of them, ſhould take care of the Safety of this Commonwealth, and they to ſit for eight dayes and no longer*, fol. 36.

Die Ven. May 13. 1659, Sir *Henry Vane* reported, That they had conferred with all the Foreign Ambaſſadors. That the Commonwealth is in Amity with all Foreign Princes, but *Spain*.

Reſolved, That Ch. Fleetwood, J. Lambert, J. Disbrough, Jam. Berry, Arthur Haſlerigg, Edmund Ludlow, *and Sir* Henry Vane *be Commiſſioners to nominate Commiſſion-Officers for the Army of this Commonwealth*. By vertue hereof they proceeded, *June* 17. 1659, to nominate Commiſſion-Officers, appointed *Robert Moſſe* a Colonel, preſenting a Liſt of his Commiſſion-Officicers; and *John Maſon* to be Governour of *Jerſey*.

Die Ven. May 31. fol. 158. Sir *Henry Vane* reports, concerning affairs between the two Northern Kings, in the *Zound*, wherein the affairs of this Commonwealth are concerned.

Die Ven. Sept. 2. 1659. At the Committee of State at *White-hall*, An Order was produced for the redelivery of the City-horſes to their reſpective owners, Signed, *H. Vane*, Preſident.

A Warrant was produced under the hand of Sir *Henry Vane*, proved by *Thomas Lewis* and one *Falconer*, for ſo many Hangers to Col. *Tompſon*, as he ſhall require for his Regiment.

Three ſeveral Letters, to deliver 1200 Arms for the uſe of my Regiment; to wit, To *Sam. Linn* my Capt. Leiutenant, 30 Arms for my Company; To Maj. *Tho. Shurman*, Major of my Regiment, four or five barrels of Powder.

Then one *Marſh* was produced a Witneſs, who proves, That Sir *Henry*

Henry Vane propoſed the new Model of Government, *Whitlock* being in the Chair, in theſe particulars;

1. *That the Supream Power, delegated by the People to their Truſtees, ought to be in ſome Fundamentals not diſpenſed with.*

2. *That it is deſtructive to the Peoples Liberties (to which by God's bleſſing they are reſtored) to admit any earthly King or ſingle perſon, to the Legiſlative or Executive Power over this Nation.*

3. *That the Supream Power delegated, is not entruſted to the Peoples Truſtees, to erect matters of Faith or Worſhip, ſo as to exerciſe compulſion therein.*

Tho. Pury proves, That he was at the debating of the two laſt of theſe Propoſitions, and believes they were propoſed to the Chairman *Whitlock*, by Sir *Henry Vane*; but affirms confidently, that Sir *Hen. Vane* gave Reaſons to maintain them.

Tho. Wallis produced, proves Sir *Henry Vane* and Col. *Rich* in the head of a Company, in *Wincheſter* Park in *Southwark*, and that the Capt. Leiutenant *Linn* ſaid to the Souldiers, that Sir *Henry Vane* had given them five pounds to drink; that the ſaid *Linn* ſent home a key to his wife, to ſend him four pounds out of his trunk, to give the Souldiers.

John Cook depoſeth, That he was ſent to the *Horſeſhoe-ſtairs*, to meet Sir *Henry Vane* and Col. *Rich*, and that Sir *H. Vane* delivered five pound to Capt. *Linn*, to reward the Souldiers. This was all the Evidence given by the King's Counſel; To which, Sir *Henry Vane* was required to make his Defence; and to go through with his Caſe all at once, and not to reply again upon the King's Counſel, who reſolved to have the laſt word to the Jury.

Sir *HENRY VANE*.

Cook in his *Pleat of the Crown*, fol. 6. ſaith, *King* is to be underſtood of a King regnant and in actual poſſeſſion of the Crown, and not of a King when he is onely *Rex de jure*, and out of poſſeſſion. Now an *interregnum* is confeſſed by the Indictment. All enſigns of Authority and badges of Government, were viſibly in another name and ſtile; the King's beſt friends ſuing, and being ſued, in another name.

The Court told him, He ſhould firſt make his Caſe out in point of Suit, and it would be then ſeaſonable to ſtand upon matter of Law; for (ſaid they) it is a good Rule, *in facto jus Oritur*, and enjoyn'd him to call his Witneſſes, if he had any.

To

To which Sir *Henry Vane* desired Process of Court, to summon them; and a further time, to answer the Charge. But it was told him, The Jury were to be kept without meat, drink, fire or candle, till their Verdict was delivered in; and therefore that could not be granted.

He then cited the 4th part of *Cook's Institutes*, concerning the Priviledge of Parliament, and that many of these things, being transacted there——

The Court here interrupted him, and said; If the things charged, were done; justifie them: if not, excuse them. So he went to give answer to the Fact.

And as to the first Warrant, *Jan.* 30. 1648; He said, that his hand had been oftentimes counterfeited, and amongst other occasions, for two great sums, to the value of ten thousand pounds; and that he had great reason to believe, that this Warrant was forged, and produced two Witnesses to prove it.

Then said *Windham*, Justice; It may be your hand may have been forged for receiving of Money, but it is not to be conjectured that it should be forged to set Ships to Sea; and directed to the Jury to consider of the circumstances.

Sir *H. Vane*. Neither of the Witnesses ever saw me set my hand to either of these Warrants or Orders, nor doth one Witness prove that he ever saw me sit in the Council of State: He further said, That he absented from the House from *Decemb.* 3. 1648, till *Febr.* 7. That he was chosen a Member of the Council of State without his consent and knowledge; and being demanded to take an Oath of Approbation of what had been done to the late King, he refused, and caused it to be expunged. That these Actings in Council, (if any were) were by Authority of Parliament, of a Parliament constituted in an extraordinary manner, made indissolvable but by Act of Parliament. He insisted much on the Preamble of that Act, so as that Parliament being co-ordinate with the King, (for the Government was in the King and the two Houses) what-ever he acted by Them or their Authority, cannot be Treason within the Statute of 25 *Ed.* 3.

He cited an Ordinance of Parliament in 1642, and said, That he hoped these things had been laid asleep by the Act of Oblivion, and if they should now rise in Judgment against him, he feared they would shake that Security which the People promised themselves under that Act. But if he should be now called in question for those things which were transacted in that Parliament, of which he was a Member, he shal have the comfort and peace of those Actions to support him in his greatest

greateſt ſufferings. He added, That if he were excepted, then muſt he be judged for the crime of the whole Nation, and that crime muſt be ravelled into through him. That the Caſe is ſuch, as never yet fell out, to wit, that the Government being entruſted to three Eſtates, they ſhould ſo fall out among themſelves, as the People cannot tell which to obey; That where theſe great Changes fall out, it is not poſſible for any man to proceed according to all formalities of Law. That there was a Political Power by this Act of 17. *Caroli* co-ordinate with the King; and where theſe Powers are not in conjunction, but enmity to each other, no Court inferiour to the Parliament, by whoſe Authority theſe things were acted, ought to be Judges of this Caſe, which certainly never happened before.

He farther ſaith, he was not the firſt mover in theſe actions, and that he ſhould be called in queſtion for theſe matters, by a King that was out of poſſeſſion at the time when theſe things were acted, would be inconvenient, to ſay no more; That when the three Eſtates were diſjoyned, he thought it the beſt policy, to preſerve the Government in its root, to wit, the *Commons*; by whom it was preſerved and at laſt reſtored to its former courſe. That as to the Regiment that paſſed under his name, he diſown'd it. That Reports of Meſſages are not the fault of the Reporter, for his judgment does not always go along with them, but he is bound to deliver his Meſſage. That he alwayes loved the Government, as it is ſet forth in our ancient Law-Books; and that that *Parliament* (ſo much decried) at laſt reſtored affairs to the poſture in which they now are.

As to the Warrants ſigned by him, he ſaid, they appear to be ſigned in the Name and by Order of the Council, and his hand that ſubſcribes, is not ſo much active as paſſive, to the Commands of the Council. If the Council, who commanded the ſigning, were unwarrantable, The Parliament who appointed the Council, muſt be much more unwarrantable.

And here he offered theſe points to be conſidered, and pray'd earneſtly to have Counſel aſſigned him, to ſpeak to them.

1. *Whether the collective body of the Parliament can be impeached of High Treaſon.*

2. *Whether any perſon acting by Authority of Parliament, can (ſo long as he acteth by that Authority) commit Treaſon?*

3. *Whether matters acted by that Authority, can be called in queſtion in an inferiour Court?*

4. *Whether a King* de jure, *and out of poſſeſſion, can have Treaſon com-*

committed againſt him, he not being King de facto, *and in actual poſſeſſion?* and pray'd it might be argued by Counſel.

5. *Whether matters done in* Southwark, *in another County, may be given in evidence to a* Middleſex *Jury?*

As to the laſt Exception, the Court ſaid,

That he was indicted for compaſſing and imagining the King's Death in *Middleſex*, and any overt act, to prove this Imagination, may be given in evidence whereſoever it be acted. To which Sir *Hen. Vane* prayed the benefit of a Bill of Exception, upon the Statute of *Weſtminſter* 2. cap. 31. and prayed that the Juſtices might ſeal it, which they all refuſed, and held, it lay not in any caſe of the Crown.

The King's Counſel deſired he might call his Witneſſes, (if any he had) for if they once came to reply to him, he muſt then be ſilent, and conſented, that (if it would aid him) they would allow his Actings to be in the Name and by the Authority of the Council of State, and the Actings of the Council of State to be by Authority of what he called a Parliament.

Sir *Hen. Vane* replyed; Then what I acted in the *Council of State*, and *Committee of Safety*, conſtituted by the Parliament to endure for eight dayes, you will allow me. Then you muſt prove that I ever acted in the other Council of State, after the Parliament was turned out.

Then the King's Counſel produced a Warrant, dated *Novemb.* 3. 1659, which was ſent in purſuance of an Order of the *Committee of Safety*, by Sir *Hen. Vane*, as Treaſurer of the Navie. This Warrant was, for the ſending of divers Arms Northwards, after Mr. *Lambert*, who was gone down to oppoſe the now Duke of *Albemarle*.

Sir *Hen. Vane* produced *Will. Angel, Briſco, Middleton*, &c. Officers of that Regiment which went under his name, who having recourſe unto him for Orders, about *Octob.* 1659, he bad them deſiſt, and declared his diſ-ſatisfaction in their proceedings; and this, after their ſeveral importunities to have Orders from him. And thus he cloſed his Defence.

FYNCH, Sollicitor.

As to pretence of the power of Parliament, It is to be known, that it was not the eighth part of the Houſe of Commons, ſuch as were let in to do all that hath been complained, and the acting under Authority of ſuch an End of a Parliament, under ſuch a Violation, was no Excuſe, but an Aggravation; but that the Parliament was in Law,

ended, by the death of the late King, notwithſtanding that Act of 17. *Caroli primi*, appears thus;

Firſt, The King's Writ for a Parliament is *ad tractandum nobiſcum*; which is intended as well of the natural capacity of the King, as of his politick.

Secondly, 'Tis abſurd to ſay, that the Acts of Parliament of King *Charles* the firſt, ſhould be his Acts, in the time of King *Charles* the ſecond.

Thirdly, A Commiſſion of Sewers, enacted to be on foot for ten years, expires by the death of the King, and the authority of the Commiſſioners is at an end.

Fourthly, It is not poſſible for one King to impoſe a Parliament upon a ſucceſſor. So much for his acting by colour of authority of Parliament.

And as to the Queſtion, *Whether an Houſe of Parliament can commit Treaſon?* If they depart from that Allegiance which they have ſworn, at their firſt meeting, they are impeachable for it.

As to a Co-ordination in the Parliament, he denied it.

As to the Queſtion, *Whether the King being out of actual poſſeſſion, can have Treaſon committed againſt him?* he affirmed it; And ſaid, otherwiſe, if Rebellion ſhould be ſo proſperous, as to depoſe or oppreſs the King in Battel, the Offenders are not to be called in queſtion, becauſe they prevailed. He ſaid, it was the Plea of *Watſon* the Jeſuite, who, being Indicted for compaſſing the death of King *James*, in *Scotland*, after he was declared King of *England*, and before his actual entring into this Realm, made this Defence; That the King was never in poſſeſſion of the Crown.

Windam Juſtice. As to the Act of 17. *Caroli*, and the Preamble of that Act, ſo much inſiſted upon by the Priſoner. 1. He held that the Parliament had not greater Authority by it, but were onely made more durable than other Parliaments have been; but he held, that the Parliament was abſolutely diſſolved by the death of the King: and put this caſe: If it ſhould be enacted that ſuch a Marriage ſhould continue, till it was diſſolved by Act of Parliament, If one dies, it is a determination of it in Fact, ſo as no man can ſay, but it is abſolutely diſſolved. 2. It muſt continue in the degree and dignity of a Parliament. If the Houſe be under a force, and ſome kept out, ſome let in, to ſerve a Turn, what-ever they act is a Nullity in Law. For Freedom is the principal eſſence and honour of a Parliament; yet though the Houſe be under a Force, the Houſe is not diſſolved by ſuch Force,

but

but the proceedings are to be ſuſpended, till it require its former Liberty; and this as well by the Common Law, as by the Civil and Canon Laws of all other Countries. 3. The Parliament is the King's great Council, The Peers are *Conſiliarii nati*; If they be forc'd away, or laid aſide, as here they were, all the reſt is but *Magni Nominis Umbra*.

Twiſden held the ſame opinion, That it is not the ſitting of a few Members within thoſe Walls, that will continue it a Parliament.

And though another Parliament, a great many years after the Kings death, declared it to be at an end, yet that Act was but Declaration, it was at an end before.

Whether a Parliament may commit Treaſon, is not the Queſtion; but, Whether a few of the Houſe, ſhutting out their Fellows, and uſurping the Government, were not Traitors?

Foſter held the ſame opinion, and ſaid, The diſtinction between the Politick and Natural capacity of the King, was the Treaſon of the two *Spencers*; That Priviledge of the Parliament is no ſhelter for breach of the Peace, much leſs for Treaſon.

Twiſden added, That to compaſs the Death of the King as a natural perſon, was Treaſon; to compaſs his Death in his Politick capacity, as to depoſe him, was Treaſon, and both provided for by the Act of 25. *Ed.* 3. That in the ſame inſtant the late King expired, in the very ſame his now Majeſty was King *de facto*, and affirmed the caſes of *Watſon* and *Clark*. 1. *Jac.* If an Army be raiſed againſt the King, and the King is ſlain in the battel, This Treaſon is queſtionable by the Succeſſor, as *Stonies* Caſe is in *Dyer*.

Thus ended the queſtions of Law, propoſed.

The Sollicitor ſpake after to the Jury, concerning the Fact, which after, they withdrew to conſider, and being withdrawn about half an hour, returned with their Verdict, which being delivered by the Foreman in the name of his fellows, with their conſent, found the Priſoner guilty of High Treaſon from *Januar.* 30. 1648.

They not only found him guilty according to the Indictment, which was laid for what the Priſoner did, 1659; but for a long ſeries of High Treaſon (as they reckon) from *Jan.* 30. 1648. By which it may appear, they were a well-prepared Jury for their work. The Judges oft, if not alwayes, pretend, that the Jury is to paſs Verdict only as to matter of Fact, according to the Evidence given by the Witneſſes thereof. But a general Verdict evidently involves both, that he is guilty of ſuch fact, and that the fact is Treaſon, as they in this Verdict

openly undertake to determine, taking in the full ſence of the Indictment, and much more. Unleſs a Jury diſtinguiſh themſelves out of this uſually impoſed ſnare, by giving a ſpecial Verdict concerning the Fact only, they undeniably have a ſhare with their Tutors and Inſtructors in the ſhedding of innocent blood, in caſe matter of Law be wrongfully ſtated.

For a Jury to reſolve a Caſe of Law, that ſo eminent a Subjects life was concern'd in, and that in leſs than half an hour, which never yet came before any Bench of Judicature in *England*, may ſeem a very ſtrange and bold adventure.

But *Reader*, How far this falls ſhort of a full Account of all that was ſpoken by the Priſoner (though much interrupted by the *King's Bench* and *Counſel*) in thoſe ten hours, which on this day of his Tryal he ſtood at the Bar, (pleading and anſwering for his Life, and the Cauſe he had with many thouſands been engaged in) I leave to thee to imagine, till a fuller and compleater Account thereof can be obtained, than is yet come to hand.

This was remarkable; That never being indulg'd the liberty of any repoſe to his body, all that while, (which indeed, he asked not) nor receiving any creature-refreſhings, though ſent him, for his ſupport; yea, and though after all his moſt rational Plea, in his Defence, the Jury gave their Verdict againſt his Life, he came chearfully and pleaſantly from the Bar, as thought worthy to ſuffer for the Name of Chriſt; and was ſo raiſed and full of rejoycing that evening, at the place of his confinement in the *Tower*, that he was a wonder to any that were about him. This ſpiritual rejoycing in Chriſt Jeſus, and his heavenly raiſedneſs of ſpirit, increaſed more and more, to the very moment of his death; inſomuch, that meer ſtrangers to his perſon, yea, very foreigners, wondred at his triumphant diſſolution.

The true Copy of the Priſoner's own Papers, containing the ſubſtance of what he pleaded on the ſaid day of his Tryal, *June* 6.

Memorandums as to my main Defence, in relation to matter of Fact, and as a Narrative thereof.

THat without any ſeeking of mine, I was choſen by Writ under the Great Seal, to ſerve as Burgeſs for the Town of *Kingſton* upon *Hull*, in the Parliament that ſate down on the third of *Novemb.* 1640.

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and having in purſuance thereof, taken my ſeat in the ſaid Parliament, I was obliged by Law, to give my attendance upon the ſaid Truſt, as well as upon grounds of Duty and Conſcience.

The ſaid Parliament was not onely called and aſſembled after the uſual manner, and had the Power and Priviledges incident to that high Court, but was by expreſs Statute and Conſent of the three Eſtates, ſo conſtituted, as to its Continuance, Adjournment, Prorogation and Diſſolution, that in none of theſe particulars they were ſubject to alteration, but by their own common Aſſent, declared by Act of Parliament, to be paſſed by themſelves for that purpoſe, with the Royal Aſſent.

In the Preamble to the Act for continuance of the ſaid Parliament, theſe words are contained: *Whereas great ſums of Money muſt of neceſſity be ſpeedily advanced and provided, for the relief of his Majeſties Army and People in the Northern parts of this Realm, and for preventing the imminent danger this Kingdom is in, and for ſupply of his Majeſties preſent and urgent occaſions, which cannot be ſo timely effected as is requiſit, without Credit for raiſing the ſaid Moneys; which Credit cannot be obtained until ſuch obſtacles be firſt removed, as are occaſioned by fears, jealouſies and apprehenſions of divers his Majeſties loyal Subjects, That this preſent Parliament may be Adjourned, Prorogued or Diſſolved, before Juſtice ſhall be duely executed upon Delinquents, Publick Grievances redreſſed, a firm Peace between the two Nations of* England *and* Scotland *concluded, and before ſufficient Proviſion be made for the repayment of the ſaid Moneys ſo to be raiſed, &c.* By all which, the very work that was between the three Eſtates agreed to be done for the Good and Safety of the Kingdom, was in ſundry particulars declared and expreſſed; and not only ſo, but as is acknowledged by the late King himſelf in his Anſwer to the *nineteen Propoſitions*; The Power which thereby was legally placed in both Houſes, was more than ſufficient to prevent and reſtrain Tyranny.

So that, by what hath been ſhewed, the Law it ſelf is with me, and for me, enjoyning my continued attendance on the Truſt which by this means was committed to me, and authorized me in particular to effect the things contained in the ſaid Preamble; and to act in all matters belonging to the high Court of *Parliament*, for the Good and Safety of the Kingdom in time of imminent danger, I had been liable to great puniſhment by the Law, for diſ-attendance and deſerting my ſtation therein, till lawfully or by force diſmiſſed there-from: and this,

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whatever occaſions others might have, by a voluntary or forc'd departure from attendance upon that Truſt.

The actions therefore done by me in this capacity, and according to the Law, Priviledges, Cuſtoms and Power of *Parliament*, and that, ſuch a one as was thus extraordinarily conſtituted, neither are nor can be brought within the Statute of 25. *Ed.* 3. *cap.* 2. nor are to be queſtioned, tried, much leſs judged and ſentenc'd in any inferior Court. Nay, ſo far is it from this, that by a Declaration and Reſolution of *Parliament*, *Aug.* 13. 1642, it is adjudged to be committing Treaſon in the higheſt degree, to bring both or either Houſes of Parliament under that or ſuch like Imputations.

Nor, till of late, have I ever heard but that thoſe who took the Judgment of *Parliament* for their rule and guide, (however tortuous or erroneous it might afterwards be accounted in ſucceeding times) and they that acted by and under the countenance of their declared Judgments, Orders or Ordinances, (ever acknowledged binding during the ſitting of the Parliament) were ſafe and indempnified from all puniſhment. And for Government-ſake it ſelf, it is requiſit it ſhould be ſo; becauſe none are Judges of the Power and Priviledges of *Parliament*, but themſelves. For admit once, that their Judgment may be called in queſtion, and diſputed by private perſons, or by inferiour Courts, (whoſe Votes are included in theirs) the *Fundamentals* of Government are plucked up by the roots. *Par in pares non habet Imperium, multò minus in eos qui majus Imperium habent*; An Equal has no command over his Equal, much leſs over thoſe that have a greater command or authority.

His late Majeſty, in his Anſwer to the *nineteen Propoſitions*, does very briefly and exactly ſtate the nature and kind of Government, that is exerciſed in this Kingdom, ſaying, *The Laws in this Kingdom are made by a King, a Houſe of Peers, and a Houſe of Commons, choſen by the People, all having free Votes, and particular Priviledges. Theſe three Eſtates, making one incorporate body, are they, in whom the Sovereignty and Supream Power is placed, as to the making and repealing of Laws. And the Government, according to theſe Laws, is truſted to the King, who in the Interval of Parliaments, is ſole in the exerciſe of Government, which (the Parliament ſitting) he is to exerciſe in conjunction with the two Houſes.*

And his ſaid Majeſty aſſerting three ſorts of Government, *Abſolute Monarchy*, *Ariſtocracy*, and *Democracy*, does moſt rightly diſtinguiſh the Monarchy of *England* from all thoſe three, and commends the Conſti-

Conſtitution of this Kingdom, as it is a mixture of all three, having the conveniencies of them all, without the inconveniencies of any one, as long as the ballance hangs even between the three Eſtates, that they run joyntly on in their proper channels, and that the overflowing of either on either ſide, raiſe no deluge nor inundation.

By the paſſing of the foreſaid Act, for the continuance of the forementioned Parliament, the Intervals of Parliament were no longer, as before, at the will and pleaſure of the *King*, but the Power to continue the ſaid *Parliament*, without Adjournment, Prorogation, or Diſſolution, reſided in the two Houſes with the *King*, joyntly, and in none of them ſeverally; ſo that in effect, the Government of the Kingdom, during the continuance of that Parliament, was in conjunction of the three Eſtates, and in their common conſents and agreements among themſelves, given in Parliament, the aſſembling and meeting whereof was appointed and fixed to a place certain, by Law.

By reaſon hereof, it is not the attendance of any of the Members in Parliament (for diſcharge of the Truſt repoſed in them, confirm'd and enlarged by the ſaid Act) that is faulty or cenſurable by the Law, but thoſe that unwarrantably depart and deſert that their Truſt and ſtation, are to be blamed; *6. Hen. 8. 16.*

The *King* in conjunction with the *Parliament*, is *maxime Rex*, and is ſupported in the Throne and exerciſe of his Regal Power, by the joynt concurrence of both Houſes. And becauſe (as his late Majeſty well obſerved) the happineſs and good of the Conſtitution of this Government, lies in keeping the ballance even between the three Eſtates, containing themſelves within the bounds of their proper channels, therefore in attempts of either to overflow thoſe bounds, (they being coordinate) the Office of a *Parliament* is by the very fundamental conſtitution of the Government, to keep this ballance well poiſed. And to that end (as was before mentioned) his Majeſties own words are in his ſaid Anſwer to the *nineteen Propoſitions*; *That there was legally placed in both Houſes, a Power more than ſufficient to prevent and reſtrain the Power of Tyranny.* If ſo, then are they the legal Judges, when there is danger of Tyranny; and have legal power to require their Judgment and Reſolves to be obeyed, not only when Arms are actually raiſed againſt them, but when they diſcern and accordingly declare a preparation towards it; elſe, they may find it too late to prevent the power of Tyranny. There is no greater attempt of Tyranny, than to arm againſt the Parliament; and there is no viſible way for the reſtraining ſuch Tyranny, but by raiſing Arms in their own and the

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Kingdoms defence. Leſs than this is not ſufficient, and therefore far from more than ſufficient, for the puniſhment of Delinquents and reſtraint of Tyranny.

Unto the King in conjunction with his two Houſes, according as is provided by the Law, in this capacity of his as *maxime Rex*, was the duty of Allegiance to be yeelded by his Subjects, during the indiſſolved ſtate of that Parliament. For they were the King's great Council, and ſupream Court, exerciſing the known Power and Priviledges, that time out of mind have appertained to them, and been put forth by them, as the Exigents of the Kingdom have required, when differences have happened about the very title of the Crown, in declaring the duty of the Subject, by yeelding their Allegiance to Kings *de facto*, when Kings *de jure* have been kept out of poſſeſſion. This our Chronicles, and the Hiſtories of former times, do plentifully inform.

The cauſes that did happen, to move his late Majeſty to depart from his Parliament, and continue for many years, not only at a diſtance and in a diſjunction from them, but at laſt, in a declared poſture of Enmity and War againſt them, are ſo well known and fully ſtated in print (not to ſay, *written in characters of blood*) on both parts, that I ſhall only mention it, and refer to it.

This matter was not done in a corner. The Appeals were ſolemn, and the deciſion by the Sword, was given by that God, who being the Judge of the whole World, does Right, and cannot do otherwiſe.

By occaſion of theſe unhappy differences, thus happening, moſt great and unuſual Changes and Revolutions, like an irreſiſtible Torrent, did break in upon us, not only to the diſjoynting that Parliamentary Aſſembly among themſelves, (the head from the members, the co-ordinates from each other, and the houſes within themſelves) but to the creating ſuch formed diviſions among the people, and to the producing ſuch a general ſtate of Confuſion and Diſorder, that hardly any were able to know their duty, and with certainty to diſcern who were to command and who to obey. All things ſeemed to be reduced, and in a manner reſolved into their firſt elements and principles.

Nevertheleſs, as dark as ſuch a ſtate might be, the Law of *England* leaves not the Subjects thereof (as I humbly conceive) without ſome glimpſes of direction what to do, in the cleaving to, and purſuing of which, I hope I ſhall not be accounted nor judged an offender; or if I am, I ſhall have the comfort and peace of my Actions to ſupport me in and under my greateſt ſufferings.

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The Reſolutions of all the Judges in *Calvin*'s Caſe, entituled, *Poſtnati*, in the 7th Book of *Cook*'s Reports, and the learned Arguments thereupon, afforded me inſtruction even in this matter. It may be 'tis truly thence affirmed, that Allegiance is due only to the King, and how due, is alſo ſhewed.

The King is acknowledged to have two capacities in him; one a *natural*, as he is deſcended of the Blood Royal of the Realm; and the Body natural he hath in this capacity, is of the creation of Almighty God and mortal: The other is a *politick* capacity, in reſpect of which he is a Body politick or myſtical, framed by the policy of man, which is immortal and inviſible. To the King, in both theſe capacities conjoyn'd, Allegiance is due; that is to ſay, to the natural perſon of the King, accompanied with his politick capacity, or the politick appropriated to the natural.

The politick capacity of the King hath properly no body nor ſoul: for it is framed by the policy of man.

In all Indictments of Treaſon, when any one does intend the death and deſtruction of the King, it muſt needs be underſtood of his natural body, the other being immortal. The Indictment therefore concludes *contra Legiantiæ ſuæ debitum*, againſt the duty of his Allegiance, ſo that Allegiance is due to the natural body.

Admitting then that thus by Law, Allegiance is due to the King (as before recited) yet it is alwayes to be preſumed, that it is to the King in conjunction with the Parliament, the Law, and the Kingdom, and not in diſjunction from, or oppoſition to them; and that, while a Parliament is in being and cannot be diſſolved, but by the Conſent of the three Eſtates.

This is therefore that, which makes the matter in queſtion, a new Caſe, that never before happened in the Kingdom, nor was poſſible to happen, unleſs there had been a Parliament conſtituted, as this was, unſubjected to Adjournment, Prorogation or Diſſolution, by the King's will. Where ſuch a power is granted, and the co-ordinates thereupon diſagree and fall out, ſuch effects and conſequents as theſe that have happened, will but too probably follow. And, if either the Law of Nature, or *England*, inform not in ſuch caſe, it will be impoſſible for the Subjects to know their duty, when that Power and Command which ought to flow from three in conjunction, comes to be exerciſed by all or either of them, ſingly and apart, or by two of them againſt one.

When new and never-heard-of Changes do fall out in the Kingdom, it is not like that the known and written Laws of the Land ſhould be

the exact Rule, but the Grounds and Rules of Juſtice, contained and declared in the Law of Nature, are and ought to be a Sanctuary in ſuch caſes, even by the very Common Law of *England*: For, thence originally ſpring the unerring Rules, that are ſet by the Divine and Eternal Law, for Rule and Subjection in all States and Kingdoms.

In contemplation hereof, as the Reſolve of all the Judges, it was agreed,

1. *That Allegiance is due to Soveraignty by the Law of Nature*, to wit, that Law which God at the creation of Man, infuſed into his heart, for his preſervation and direction, the Law eternal. Yet, is it not this Law, as it is in the heart of every individual man, that is binding over many, or legiſlative, but as it is the Act of a Community, or an Aſſociated People, by the right dictates and perſwaſions of the work of this Law in their hearts. This appears in the Caſe of the *Iſraelites*, *Judg.* 20, & 21 chapters, cited in the 4th part of *Cook's Inſtitutes*, where mention is made of a Parliament without a King, that made War, and that with their Brethren. They met as one man to do it, in vindication of that Juſtice unto which they were obliged even by the Law of Nature. This is that which Chancellor *Forteſcue* calls *Political Power*, here in *England*; by which, as by the Ordinance of man, in purſuance of the Ordinance of God, the Regal Office conſtituted, or the King's Politick Capacity, and becomes appropriated to his natural perſon.

Thus Politick Power is the immediate Efflux and Off-ſpring of the Law of Nature, and may be called a part of it. To this, *Hooker* in his *Eccleſiaſtical Polity* agrees, and *Selden* on that ſubject.

The Law of Nature thus conſidered, is part of the Law of *England*, as is evident by all the beſt received Law-Books, *Bracton*, *Fleta*, *Lambard* upon the *Saxon Laws*, and *Forteſcue* in the praiſe of the *Laws of England*. This is the Law that is before any judicial or municipal Law, as the root and fountain whence theſe and all Government under God and his Law do flow.

This *Politick Power*, as it is exerciſed in conjunction with, and conformity to the Eternal Law, partakes of its moral and immutable nature, and cannot be changed by Act of Parliament. Of this Law it is that *Magna Charta* and the *Charter of Foreſt*, with other Statutes, rehearſed in the *Petition of Right*, are for the moſt part declaratory. For they are not introductive of any new Law, but confirmations of what was good in all Laws of *England*, before. This agrees with that Maxime, *Salus Populi ſuprema Lex*; that being made due and binding by

by this Law, which in the Judgment of the Community, declaring their mind by their own free choſen Delegates and Truſtees, in harmony with the Eternal Law, appears profitable and neceſſary for the preſervation and good of the whole Society.

This is the Law, which is put forth by the common conſent of the whole Realm, in their Repreſentative; and (according to the fundamental Conſtitutions of this Kingdom) is that, with which the Kings of this Land, by the joynt co-operation of the three Eſtates, do make and repeal Laws.

But through the diſorders and diviſions of the times, theſe two Powers, the *Regal* and *Political*, (which, according to the Law of *England*, make up but one and the ſame ſupream Authority) fell aſſunder, and found themſelves in diſjunction from, and oppoſition to one another. I do not ſay, The queſtion is now, which of theſe is moſt rightly, (according to the principles of the Law of Nature and the Law of *England*) to be adhered unto and obeyed, but unto whether Power adherence is a crime, in ſuch an Exigent of State? Which, ſince it is ſuch a new and extraordinary Caſe, evidently above the Track of the ordinary Rules, contained in the poſitive and municipal Laws of *England*, there can be no colour to bring it within the Statute of 25. *Ed.* 3. *cap.* 2. foraſmuch as all Statutes preſuppoſe theſe two Powers, *Regal* and *Political*, in conjunction, perfect unity and ſubſerviency, which this Caſe does not, cannot admit. So exceeding new and extraordinary a Caſe is it, that it may be doubted whether, and queſtioned how far, any other Parliament, but *that* Parliament it ſelf that was privy to all its own Actings and Intentions, can be an indifferent and competent Judge. But however, the point is of ſo abſtruſe and high conſideration, as no inferiour Court can, or ought to judge of it, as by Law-Books is moſt undeniable; to wit, *Bracton* and others.

This then being the true ſtate of the Caſe, and the ſpring of that Conteſt that enſued, and received its deciſion by the late War; The next Conſideration is, how far I have had my ſhare and part therein, that by the Laws is not warrantable, or by what appears in way of proof, to the Jury.

For the firſt, I ſhall crave leave to give you this account of my ſelf, who have beſt known my own mind and intentions throughout, and would not now, to ſave my life, renounce the principles of that Righteous Cauſe, which my conſcience tells me, was my duty to be faithful unto.

I do therefore humbly affirm, That in the afore-mentioned great

Changes and Revolutions, from firſt to laſt, I was never a firſt mover, but alwayes a follower, chuſing rather to adhere to *things* than *perſons*; and (where Authority was dark or dubious) to do things juſtifiable by the Light and Law of Nature, as that Law is acknowledged part of the Law of the Land; things, that are *in ſe bona*, and ſuch, as according to the grounds and principles of the Common Law, as well as the Statutes of this Land, would warrant and indemnifie me, in doing them. For I have obſerved by Precedents of former times, when there have ariſen diſputes about Titles to the Crown, between Kings *de facto* and Kings *de jure*, the People of this Realm wanted not directions for their ſafety, and how to behave themſelves within the duty and limits of Allegiance to the King and Kingdom, in ſuch difficult and dangerous ſeaſons.

My Lord *Cook* is very clear in this point, in his Chap. of Treaſon, *fol.7.* And if it were otherwiſe, it were the hardeſt caſe that could be, for the people of *England*: For then they would be certainly expoſed to puniſhment, from thoſe that are in poſſeſſion of the ſupream power, as Traitors, if they do any thing againſt them, or do not obey them; and they would be puniſhable as Traitors, by him that hath right, and is King *de jure*, in caſe they do obey the Kings *de facto*, and ſo all the people of *England* are neceſſarily involved in Treaſons, either againſt the Powers *de facto*, or *de jure*, and may by the ſame reaſon be queſtioned for it, as well as the Priſoner, if the *Act of Indempnity* and the *King's Pardon* did not free them from it. The ſecurity then and ſafety of all the *People* of *England*, is by this means, made to depend upon a *Pardon*, (which might have been granted or denied) and not upon the ſure foundations of *Common Law*; an opinion ſure, which (duly weighed and conſidered) is very ſtrange, to ſay no more.

For I would gladly know that perſon in *England* of eſtate and fortune, and of age, that hath not counſelled, aided or abetted, either by his perſon or eſtate, and ſubmitted to the Laws and Government of the Powers that then were; and if ſo, then by your Judgments upon me, you condemn (in effigies, and by neceſſary conſequence) the whole Kingdom.

And if that be the Law, and be now known to be ſo, it is worth conſideration, whether, if it had been generally known and underſtood before, it might not have hindred his Majeſties Reſtoration.

Beſides, although, until this Judgement be paſſed upon me, the people have apprehended themſelves, as free from queſtion, and out of danger, by reaſon of the *Act of Indempnity and General Pardon*; yet when

when it ſhall appear to them, that ſuch their ſafety is not grounded on the Common Law, nor upon the Law of Nature, but that againſt both theſe in their actions, they are found faulty, and tainted with a moral guilt, and that as principals; alſo, (ſince in Treaſon there are no Acceſſories) what terrifying Reflexions muſt this needs ſtir up in the mind of every man, that will be apt to believe his Turn will come next, at leaſt once in two years, as hath befallen me in my perſon, who (however I have been miſjudged and miſunderſtood) can truly affirm, that in the whole ſeries of my Actions, that which I have had in my eye, hath been to preſerve the ancient, well-conſtituted Government of *England* on its own *baſis* and primitive righteous foundations, moſt learnedly ſtated by *Forteſcue* in his Book, made in praiſe of the *Engliſh Laws*. And I did account it the moſt likely means for the effecting of this, to preſerve it, at leaſt in its root, whatever changes and alterations it might be expoſed unto in its branches, through the bluſtrous and ſtormy times that have paſſed over us.

This is no new doctrine, in a Kingdom acquainted with *Political Power*, as *Forteſcue* ſhews ours is, deſcribing it to be in effect, the Common Aſſent of the Realm, the Will of the People or whole Body of the Kingdom, repreſented in Parliament. Nay, though this Repreſentation (as hath fallen out) be reſtrained for a ſeaſon, to the Commons Houſe, in their ſingle actings, into which (as we have ſeen) when by the inordinate fire of the times, two of the three Eſtates have for a ſeaſon been melted down, they did but retire into their Root, and were not hereby in their Right, deſtroyed, but rather preſerved, though as to their exerciſe, laid for a while aſleep, till the ſeaſon came of their Revival and Reſtoration.

And whatever were the intents and deſigns of others, (who are to give an account of their own actions) It is ſufficient for me, that at a time critical and deciſive, (though to my own hazard and ill uſage) I did declare my Refuſal of the Oath of *Abjuration*, which was intended to be taken by all the Members of Parliament, in reference to Kingly Government, and the Line of his now Majeſty in particular. This I not only poſitively refuſed to take, but was an occaſion of the ſecond thoughts which the Parliament reaſſumed thereof, till in a manner, they came wholly at laſt to decline it; a proof undeniable of the remoteneſs of any intentions or deſigns of mine, as to the endeavouring any alteration or change in the Government, and was that which gave ſuch jealouſie to many in the Houſe, that they were willing to take the firſt occaſion to ſhew their diſlike of me, and to diſcharge me from ſitting among them.

But

But to return to what I have before affirmed, as to my being no leading or first Actor in any Change, it is very apparent by my deportment at the time when that great Violation of Priviledges happened to the Parliament, so as by force of Arms several Members thereof were debarred coming into the House and keeping their seats there. This made me forbear to come to the Parliament for the space of ten weeks, (to wit, from the third of *Decemb.* 1648, till towards the middle of *February* following) or to meddle in any publick transactions. And during that time, the matter most obvious to exception, in way of alteration of the Government, did happen. I can therefore truly say, that as I had neither consent nor vote, at first, in the Resolutions of the Houses, concerning the *Non-Addresses* to his late Majesty, so neither had I, in the least, any consent in, or approbation to, his Death. But on the contrary, when required by the Parliament, to take an Oath, to give my approbation *ex post facto* to what was done, I utterly refused, and would not accept of sitting in the Council of State upon those terms, but occasioned a new Oath to be drawn, wherein that was omitted. Hereupon, many of the Council of State sate, that would not take the other.

In like manner, The Resolutions and Votes for changing the Goverment into a *Commonwealth* or *Free-State* were passed, some weeks before my return to Parliament. Yet afterwards (so far as I judged the same consonant to the principles and grounds, declared in the Laws of *England*, for upholding that Political Power, which hath given the rise and introduction in this Nation, to Monarchy it self, by the account of antient Writers) I conceived it my duty, as the state of things did then appear to me, (notwithstanding the said Alteration made) to keep my station in Parliament, and to perform my Allegiance therein, to King and Kingdom, under the Powers then *regnant*, (upon my principles before declared) yeelding obedience to their Authority and Commands. And having received Trust, in reference to the safety and preservation of the Kingdom, in those times of imminent danger, (both within and without) I did conscientiously hold my self obliged, to be true and faithful therein. This I did upon a publick account, not daring to quit my station in Parliament, by vertue of my first Writ. Nor was it for any private or gainful ends, to profit my self or enrich my Relations. This may appear as well by the great Debt I have contracted, as by the destitute condition my many Children are in, as to any provision made for them. And I do publickly challenge all persons whatsoever, that can give information of any Bribes or co-

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vert wayes, uſed by me, during the whole time of my publick acting. Therefore I hope it will be evident to the Conſciences of the Jury, that what I have done, hath been upon principles of Integrity, Honour, Juſtice, Reaſon and Conſcience, and not as is ſuggeſted in the Indictment, by *inſtigation of the Devil*, or *want of the fear of God*.

A ſecond great Change that happened upon the Conſtitution of the Parliament, and in them, of the very Kingdom it ſelf and the Laws thereof (to the plucking up the Liberties of it by the very roots, and the introducing of an Arbitrary Regal Power, under the name of *Protector*, by force, and the Law of the Sword) was the Uſurpation of *Cromwel*, which I oppoſed from the beginning to the end, to that degree of ſuffering, and with that conſtancy, that well near had coſt me not only the loſs of my Eſtate, but of my very Life, if he might have had his will, which a higher than he hindred. Yet I did remain a Priſoner, under great hardſhip, four months, in an Iſland, by his Orders.

Hereby, That which I have aſſerted, is moſt undeniably evident, as to the true grounds and ends of my actions all along, that were againſt Uſurpation on the one hand, or ſuch extraordinary Actings on the other, as I doubted the Laws might not warrant or indempnifie, unleſs I were inforced thereunto, by an over-ruling and inevitable neceſſity.

The third conſiderable Change, was the total diſappointing and removing of the ſaid Uſurpation, and the returning again of the Members of Parliament to the exerciſe of their primitive and original Truſt, for the good and ſafety of the Kingdom, ſo far as the ſtate of the times would then permit them, being ſo much as they were, under the power of an Army, that for ſo long a time had influenced the Government. Towards the recovery therefore of things again into their own channel, and upon the legal Root of the Peoples Liberties, to wit, their Common Conſent in Parliament, given by their own Deputies and Truſtees, I held it my duty to be again acting in publick Affairs, in the capacity of a Member of the ſaid Parliament, then re-entred upon the actual Exerciſe of their former Power, or at leaſt ſtrugling for it. In this ſeaſon I had the opportunity of declaring my true intentions, as to the Government, upon occaſion of refuſing the Oath of *Abjuration* before mentioned.

And whereas I am charged with keeping out his Majeſty that now is, from exerciſing his Regal Power or Royal Authority in this his Kingdom; through the ill-will born me by that part of the Parliament then ſitting, I was diſcharg'd from being a Member thereof, about

Jan.

Jan. 9. 1659, and by many of them was charged, or at leaſt ſtrongly ſuſpected to be a *Royaliſt*: Yea, I was not only diſcharged from my attendance in Parliament, but confined as a priſoner at mine own houſe, ſome time before there was any viſible power in the Nation that thought it ſeaſonable to own the King's Intereſt. And I hope my ſitting ſtill, will not be imputed as a failer of duty, in the condition of a priſoner, and thoſe circumſtances I then was in. This I can ſay, that from the time I ſaw his Majeſties Declarations from *Breda*, declaring his Intentions and Reſolutions as to his Return to take upon him the actual Exerciſe of his Regal Office in *England*, and to indempnifie all thoſe that had been Actors in the late Differences and Wars, (as in the ſaid Declaration doth appear) I reſolved, not to avoid any publick queſtion, (if called thereto) as relying on mine own Innocency and his Majeſties declared Favour, as beforeſaid. And for the future I determined to demean my ſelf with that inoffenſiveneſs and agreeableneſs to my duty, as to give no juſt matter of new provocation to his Majeſty in his Government. All this on my part, hath been punctually obſerved, whatever my ſufferings have been. Nor am I willing, in the leaſt, to harbour any diſcouraging thoughts in my mind, as to his Majeſties Generoſity and Favour towards me, who have been faithfull to the Truſt I was engaged in, without any malicious intentions againſt his Majeſty, his Crown or Dignity, as before hath been ſhewed. And I am deſirous for the future, to walk peaceably and blameleſly.

Whatever therefore my perſonal ſufferings have been, ſince his Majeſties Reſtoration, I rather impute them to the falſe reports and calumnies of mine enemies and miſjudgers of my actions, than reckon them as any thing that hath proceeded from his Majeſties proper inclination, whoſe favour and clemency I have had juſt reaſon with all humility to acknowledge.

Firſt, with regard to his Majeſties Speech made the 27th of *July*, 1660, in the Houſe of Peers, wherein his Majeſty expreſly declared it to be no intention of his, that a perſon under my circumſtances ſhould be excepted out of the *Act of Indempnity*, either for Life or Eſtate.

And, ſecondly, however it was the Parliaments pleaſure (my ſelf unheard, though then in the Tower, and ready to have been brought before them) to except me out of the common Indempnity, and ſubject me to queſtion for my actions, yet they themſelves, of their own accord (admitting the poſſibility that in ſuch queſtioning of me, I might be attainted) made it their humble deſire to his Majeſty, that in ſuch caſe, Execution, as to my Life, might be remitted. Unto this his Majeſty readily

readily gave his Grant and Aſſent. And I do firmly believe, if the Houſes had pleaſed to give me the opportunity and leave of being heard, they would never have denied me the Indempnity granted to the reſt of the Nation.

That which remains of further Charge yet to me, is the buſineſs of a Regiment, an imployment, which I can in truth affirm, mine own inclinations, nature and breeding little fitted me for, and which was intended onely as honorary and titular, with relation to Volunteers, who, by their application to the Council of State, in a time of great Commotions, did propound their own Officers, and (without any ſeeking of mine, or my conſidering any farther of it, than as the uſe of my Name) did (among others) nominate me for a Colonel, which the Council of State approved, granting Commiſſions to my ſelf and all other Officers relating thereunto. And the Parliament confirmed my ſaid Commiſſion, upon report thereof made to them.

This will appear by ſeveral Witneſſes I have to produce in this matter, that will be able to affirm, how little I took upon me, or at all, to give any Orders, or make uſe of ſuch my Commiſſion, any otherwiſe than in name only.

'Tis true indeed, that at a certain time, when I was ſummoned to appear at the Committee of the Militia in *Southwark*, whereof I was a Member; That which was called my own Company of Foot (from the reſpect which they and their Officers pretended to me) were deſirous to be in a poſture, fit for me to ſee them, and as I paſſed by, I took the opportunity at their deſire to ſhew my ſelf to them, and only (as taking notice of their reſpect) in ſome few words, expreſſing the reaſon I had to receive it in good part, I told them I would no longer detain them from their other occaſions. After I was gone from them, I appointed my Capt. Lieutenant to give them from me ſomething to drink, as might be fitting on ſuch an occaſion, which, to my beſt remembrance was five pounds, and he laid it out of his own money.

More than this (as I remember) was not done by me, ſo much as to the ſeeing any more, the Companies of that Regiment gathered together, or giving Orders to them, which I publickly and avowedly declined, perſwading the Officers to lay down their Charges, in mine own example, ſo ſoon as I diſcern'd the intentions of the ſitting down of the *Committee of Safety*, and the exorbitant power committed to them to exerciſe, and the way of proceedings by the Army, in intereſting themſelves in the Civil Government of the Nation, which I utterly diſliked.

And although I forbore not to keep my ſtation, in reference to the Council of State while they ſate, or as a Commiſſioner of the Admiralty, during the time by them appointed to act by Parliamentary Authority; and ſo, had occaſion to be daily converſant with the Members of the *Committee of Safety*, (whereof my ſelf, with others that would not accept, were named) yet I perfectly kept my ſelf diſ-intereſted from all thoſe Actings of the Army, as to any Conſent or Approbation of mine, (however in many things by way of diſcourſe, I did not decline converſe with them) holding it my duty, to penetrate as far as I could into their true Intentions and Actions, but reſolving within my ſelf to hold true to my Parliamentary Truſt, in all things wherein the Parliament appeared to me to act for the ſafety and good of the Kingdom, however I was miſ-interpreted and judged by them, as one that rather favoured ſome of the Army and their power.

Upon the whole matter, There is not any precedent, that ever both or either of the Houſes of Parliament did commit Treaſon. For though Priviledge of Parliament does not ſo hold in Treaſon, but that particular Members may be puniſhed for it, yet it is unprecedented, That both or either Houſes of Parliament, as a collective Body, ever did or could commit Treaſon.

All the Acts done in Parliaments, have been reverſed indeed, and repealed, as what was done 11. *Ric.* 2. was repealed, 21. *Ric.* 2; and what was done 21. *Ric.* 2. was repealed 1 *Hen.* 4. 3; as appears by the printed Statutes. Yet I do not find, that both or either Houſe of Parliament were declared Traitors for what they did in thoſe Parliaments; Or that any which acted under them, ſuffered for the ſame in any inferiour Courts. And ſurely, the reaſon is obvious: For they had a co-ordinacy in the Supream or Legiſlative Power, for the making, altering and repealing Laws. And if ſo, *Par in parem non habet imperium*; and by authorities out of *Bracton*, *Fleta*, and others, it may appear what Superiours the King himſelf hath, (who yet hath no Peer in his Kingdom, *niſi Curium Baronum*) God, Law, and Parliament.

And if either or both Houſes cannot commit Treaſon, Then thoſe that act by their Authority, cannot: For, *plus peccat Author quam Actor*, the Author offends more than the Actor. If thoſe that command, do not, not can commit Treaſon, how can thoſe that act by their Authority, be guilty of it?

Further, I muſt crave leave to aſſert, by reaſon of what I ſee opened upon the Evidence; That what is done in Parliament, or by their Autho-

Authority, ought not to be queſtioned in any other Court. For every offence committed in any Court, muſt be puniſhed in the ſame, or in ſome higher, and not any inferiour Court. Now, the Court of Parliament hath no ſuperiour Court, as is ſaid in *Cook's* Juriſdiction of Courts. And the reaſon there given, that Judges ought not to give any opinion in a matter of Parliament, is, becauſe it is not to be decided by the Common Laws, but *ſecundum Legem & Conſuetudinem Parliamenti*. This, the Judges in divers Parliaments have confeſſed. And that reaſon is not to be waved, which the Lord *Cook* gives: That a man can make no defence; for what is ſaid and acted there, is done in Council, and none ought to reveal the ſecrets of the Houſe: Every Member hath a Judicial Voice, and can be no Witneſs.

The main ſubſtance of theſe Papers was read and enlarged upon by the Priſoner, this day of his Tryal. He was often interrupted, but his memory was ſtill relieved by his Papers, ſo as after whatever diverſions cauſed by the Court or Counſel, he could recover himſelf again, and proceed. Yet the edge and force of his Plea, as to the influencing of the Jurors Conſciences, may appear to have been much abated by ſuch interruptions, as doubtleſs was intended, and will more at large appear, when it ſhall pleaſe God to afford us a full Narrative of the Proceedings of the King's Judges, Counſel and Jurors about him, and of all that he occaſionally ſaid, upon the digreſſions by them cauſed.

Wedneſday June 11. *being the Sentence-day.*

AFter ſome little skirmiſhings with the Priſoner, to daſh all the humane weapons of Law and Reaſon out of his hands, by force or noiſe, for half an hour or more they finally refuſed to hear his following Plea and Reaſons for an *Arreſt of Judgment*, or forbearing their ſudden and raſh proceeding to Sentence. They had promiſed him before Verdict, they would hear any thing in that kind he had to offer, as they had alſo before his pleading *not guilty*, promiſed him Counſel, which never was granted, neither. They drew him on, ſtep by ſtep, firſt, to plead, on his Arraignment-day, then to admit the Juries Verdict on his Tryal-day (ſo called, for he never owned it for a Legal Tryal to his laſt breath) and after that, out comes the Judgement or Sentence of Death againſt him, (pronounced by the Lord Chief Juſtice *Forſter*) and that, of the worſt complexion and moſt in-

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famous circumſtances, to wit, that he ſhould be hang'd, drawn and quartered, at *Tyburn*, the common Execution-place for Theeves and Robbers.

But in the Order for his Execution, (for reaſons beſt known to them that made it) the manner of his death was altered, into a beheading only, on *Tower-hill* ; to which place they carried him on a Sled, drawn with horſes, a circumſtance very ſingular, and never uſed for thoſe that die there, and which he was kept ignorant of till the very time; one of the Sheriffs men having that morning, a little before, told him, there was to be no Sled, but that he was to walk on foot.

Some farther Remarques of this laſt dayes Proceedings of the Court with him, beſides what is already mentioned, (received from one that was preſent, and did hear and ſee all, being what he could beſt remember) take as followeth.

After the cuſtomary formalities of the Court,

The Clerk demanded of Sir *Henry Vane*, what he had to ſay, why Sentence of Death ſhould not be paſſed upon him ?

Sir *Henry Vane* firſt alledged, that he had not yet heard the Indictment read in Latine. The debate upon this, took up ſome time. At length ſome of the King's Counſel deſired that the Priſoner might be ſatisfied in that point. Sir *Henry* deſired that Counſel then might alſo be aſſigned him, to make Exceptions thereto, if they found cauſe, otherwiſe he valued not the hearing of it read in Latine : This was over-ruled by the Court ; he ſoon therefore deſiſted from any further urging it.

The next thing Sir *Henry* offered in his own defence, was the Bill of Exceptions, which he brought with him ready drawn, and offered it to the Judges, deſiring them according to the Statute of *Weſtminſt.* 2. 31. made 13. *Ed.* 1. to ſign it. This he urged ſo home, that the Statute was conſulted and read in open Court, running in favour of the Priſoner, to this effect, *That if any man find himſelf aggrieved by the proceedings againſt him before any Juſtices, let him write his Exception, and deſire the Juſtices to ſet their ſeals to it.* This Act was "made (ſayes *Cook*) that the party wronged might have a founda-"tion for a legal Proceſs againſt the Juſtices, by a Writ of Error, ha-"ving his Exception entred upon Record in the Court where the in-"jury is done, which through the Juſtices over-ruling it, they could "not before procure ; ſo the party grieved was without remedy, for whoſe

" whoſe relief this Statute was made: The Juſtices refuſing to ſet to " their ſeals, the party grieved may have a Writ grounded on this " Statute, commanding them to ſet their ſeals to his Exception. This " Exception extends not only to all Pleas, dilatory and peremptory &c. " but to all Challenges of any Jurors, and any material Evidence, " given to any Jury, which by the Court is over-ruled: As in this Priſoners Caſe, the Teſtimony about falſifying of his hand to writings, &c. was, by what was offered to the Jury by Juſtice *Windham*.

Further, ſayes *Cook* on this Statute, " If the Juſtice (or Juſtices) " die, their Executors or Adminiſtrators may be proceeded againſt, " for the injury done. And if the Judge (or Judges) deny to ſeal the " Exception, the party wronged, may in the Writ of Error take Iſſue " thereupon, if he can prove by Witneſſes, the Judge or Judges denied " to ſeal it.

Notwithſtanding all this, the Judges over-ruled this Plea alſo, by ſuch interpretation as themſelves put upon that Statute, to wit, that it was not allowable in Criminal Caſes for Life. This makes the Law leſs careful for the preſervation of a man's Life, than any particulars of his Eſtate, in controverſies about which, this Statute is affirmed by them to hold; whereas Life is the greater, and innocent Blood when ſpilt is irreverſible, as to the matter, it cannot be gathered up again; the Eſtate is the leſſer, and if an erroneous Judgment paſs about it, 'tis reverſible upon Traverſe, Writ of Error, or otherwiſe.

The Reaſon they alledged for their pretended Opinion, was this; That if it be held in Criminal Caſes for Life, every Felon in *Newgate* might plead the ſame, and ſo there would be no Goal-delivery.

Sir *Henry* anſwered, his Caſe was not the Caſe of common Felons, alledging the Grant of his Majeſty to the Petition of both Houſes for his Life, in caſe he ſhould be attainted; There is no need therefore ſure (ſaid he) of fearing the conſequence of ſpinning out the time a little with a perſon in his circumſtances. Beſides (he ſaid) he had been a Priſoner two years, and never call'd on to give any account of himſelf and his actions, (ſo is it not with Felons) which with other conſiderations, may ſufficiently evince, that there is no need of ſuch haſting his Death. He told them withal, that he deſired not this, for his own ſake only, but for theirs, and for poſterity, that they might on a more leiſurely and unprejudiced hearing of what may be ſaid on all hands, prevent the bringing of innocent Blood upon themſelves and the Land.

But being in this alſo over-ruled by the Court, (ſay what he could) He only deſired, he might underſtand whether they would all give it

as their Common Judgment they would ſtand to, That what he deſired was not his due by the Law? By this means they were all put upon it, one by one, to declare themſelves in that point, unanimouſly denying him the benefit of that Act. To the by-ſtanders their chief Reaſon ſeemed to be, that it had not been practiſed this hundred or two of years.

The third thing Sir *Henry* deſired, was, That the *Petition* of both Houſes, with his Majeſties *Anſwer* thereunto, might be read in the Court, which, after ſome diſpute, was concluded to be a thing they were not bound to take notice of, not being an Act of Parliament. Yet what is any Act of Parliament, but a Bill preſented with the Petition of both Houſes to his Majeſty, with his Royal Aſſent thereto, upon Publick Record? At length they condeſcended to reade it, and that was all.

The fourth and laſt thing Sir *Henry* offered to the conſideration of of the Beach, was this; That in regard there were queſtions touching matter of Law, in his Caſe, which muſt receive their determination in Parliament, he deſired he might have Counſel aſſigned him, to argue them before their Lordſhips. Some of theſe points he inſtanced in, to wit,

1. *Whether a Parliament were accountable to any inferiour Court?*

2. *Whether the King, being out of poſſeſſion, and the Power Regent in others*———

Here they ſtopt him, not ſuffering him to proceed, nor admitting that the King was ever out of poſſeſſion. To which Sir *Henry* replied, The words of his Indictment ran thus, *that he endeavoured to keep out his Majeſty*; and how could he keep him out of the Realm, if he were not out?

But when he ſaw they would over-rule him in all, and were bent upon his Condemnation, he put up his Papers, appealing to the Righteous Judgment of God, who (he told them) muſt judge them as well as him, often expreſſing his ſatisfaction to die upon this Teſtimony; which *Keeling*, one of the King's Counſel, inſultingly anſwered, *So you may, Sir, in good time, by the grace of God.* The ſame perſon had often before ſhewed a very ſnappiſh property towards the Priſoner; and Sir *Henry* ſometimes anſwered him according to his folly: For when he would have had the Book out of the Priſoner's hand, wherein was the Statute of *Weſtminſter* 2^d^. 31.

Sir *Henry* told him, *he had a very officious Memory, and when he was of Counſel for him, he would find him Books.* (Whereby was veri-

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fied what was ſaid to be ſpoken by him, at firſt, in anſwer to one of his Brethren, on the Arraignment-day, *Though we know not what to ſay to him, we know what to do with him.*)

After Sentence given, Chief Juſtice *Forſter* endeavoured to take off the King from any Obligation by that Grant to the Petition of both Houſes, ſaying, *That God, though full of mercy, yet intended his mercy only to the penitent.* Whereby was verified what was ſaid to him at firſt, in anſwer to one of his Brethren, on the Arraign-day, *Though we know not what to ſay to him, we know what to do with him.*

Reaſons for an Arreſt of Judgment: writ by the Priſoner, but refuſed to be heard by the Court.

I. I Have been denied ſo much as to hear the Indictment read in Latine, as it is the Original Record of the Court; yea, ſo much as a Copy of it in Engliſh hath been denied me, during the whole time of my Tryal, by the ſight whereof I might be able to aſſign the defects of Law that may be in it.

Counſel alſo hath been denied, not only before I pleaded, but after; and all points by me offered in Law, to the Judges of the Court, have been over-ruled, without admitting me Counſel to argue the ſame, and better inform the Judgment of the Court. I have demanded, that I might put in a Bill of Exceptions, upon the Statute of *Weſtminſt.* 2^d^. *cap.* 31. This likewiſe is denied me, over-ruled and judged, as out of that Statute. Neither will Counſel be allowed me in this, to ſhew cauſe, why it ought to be admitted as of Right. And as no Counſel was allowed, ſo neither were the Judges Counſel to me, as they ſaid themſelves, they would, and ought to be, but rather ſuffered me to wrong and prejudice my ſelf, ſome of them ſaying, *Let him go on, the worſt will be his own at laſt.* And they neither checked nor reſtrained the King's Counſel, in their high and irritating expreſſions to the Jury, to find me guilty, One of whom were ſeen to ſpeak privately with the Foreman of the Jury, immediately before the Jurors went from the Bar, after he had ſpoken openly, *That the Priſoner was to be made a publick Sacrifice, in reference to the Actions done againſt his Majeſty that now is.*

All this is very far from that Indifferency in Tryal, and from that Equality which the Law requires, and they are bound by their Oath to afford me; beſides the undue proceedings in the buſineſs of the Petty Jury. A Liſt of forty eight perſons was preſented to me, who being to me unknown, and no time allowed me to gain any knowledge

of

of them, though I was permitted to challenge and refuſe three Juries, without ſhewing cauſe, yet could not that refuſal be upon ſuch rational grounds as the Law ſuppoſes, which doubtleſs intends ſubſtantial relief to the Priſoner, in allowing him the liberty of ſuch refuſal: whereas, through my ignorance of the perſons, I might refuſe the beſt, and chuſe the worſt, as to my ſafety. And then, whereas the Law further allows me the refuſal of any other beyond the thirty five, on juſt and exceptionable cauſe ſhewen; what juſt exception was I capable to alledge in a ſudden hurry, againſt perſons to me altogether unknown, unleſs it would be taken for a juſt one, that they were unknown to me?

All theſe things, being ſo contrary to the Right which the Judges ſtand obliged to do to every one, as they are for that purpoſe entruſted by God and the King, is juſt cauſe for an *Arreſt of Judgment*; and a good Reaſon why they ſhould yet at length allow me a Copy of the Indictment, and aſſign Counſel to argue for the Priſoner, againſt the defects in Law that may be found therein. Without this, Law is denied me, which is my Birthright and Inheritance; the beſt Birthright the Subject hath, ſayes *Cook* on *Mag. Charta*, for thereby (ſayes he) his Goods, Lands, Wife, Children, his Body, Life, Honour and Eſtimation are protected from injury. The Life, Birthright or Inheritance we have from our parents, may ſoon be gone, if this Fence thereof be broken down. How great a wrong then it is for the Court to withhold it from me, is manifeſt. Are they not therefore in effect, chargeable with my Blood, by ſuch unequal Proceedings as I have had in my Tryal?

II. My ſecond Reaſon for an *Arreſt of Judgment*, is drawn from the Iſſue that is joyned in my Caſe, which ſeems to depend chiefly upon matter of Law, and that in ſuch tender and high points, as are only determinable in the high Court of Parliament.

For it is become the queſtion, Whether I am guilty, or not guilty, according as theſe Propoſitions following, are truly or erroneouſly reſolved?

1. *Whether the Parliament, that began* Novemb. 3. 1640, *were diſſolved by the King's Death? and whether this Court may judge things done in Parliament?*

2. *Whether the Powers* regnant, *and* de facto, *that ſucceſſively were in being, from* Jan. 30. 1648, *to* Decemb. 20, 1659, *were ſuch Powers* de facto, *as are the King, or* Seigneur le Roy, *within the purview of the Stat.* 25. Ed. 3. *having the exerciſe of Regal Power in all the particulars of it, though not the name?*

3. *Whether*

3. *Whether during that time fore-mentioned, his Majeſty that now is, were properly King* de facto *? or whether he were not out of poſſeſſion, and without all exerciſe of his Regal Authority within the Realm ?*

4. *Whether the Caſe now in queſtion, be a Treaſon literally within the words of the Statute,* 25. Ed. 3. *or at moſt, any other, than an interpretative and new Treaſon, not declared before the very time of my Tryal; and that only by the Judgment of the Court, or opinion of my Judges, eleven years after ſome of the things charged on me, are alledged to have been committed ?*

As to the firſt of theſe; The Act for Continuance of the *Long Parliament*, is expreſs; *That all and every thing or things whatſoever, done or to be done, for the Adjournment, Proroguing or Diſſolving of that Parliament, contrary to that Act, ſhall be utterly void and of none effect.* I then thus argue;

The Judges do upon occaſion of this Tryal, reſolve, That the King's Death diſſolv'd that Parliament. No Act of Parliament hath yet declared it to be ſo; and the Judges ought to have ſome Law for their guide, as *Cook* well ſayes. To be ſure, if in proceſs of time, the Parliament ſhall expreſly declare, That not the King's Death, but the Act for the Diſſolution of that Parliament, did diſſolve it; In ſuch caſe, theſe Judges Reſolution by vertue of ſuch Act, is abſolutely void. But innocent Blood in the mean time may be ſhed, and an Eſtate wrongfully taken away. And in caſe what the Judges aſſert herein, were Law, 'tis Law not known or declared till many years after the Fact committed. At this rate, who is ſecure of Eſtate or Life ?

As to the ſecond and third Queries or Propoſitions; It does appear out of the third part of *Cook's Inſtitutes*, fol. 7. and the Statute, 11. *Hen. 7. cap.* 1. That Actings for the King in *Fact*, are not to be queſtioned by the King in *Right*. If it be ſaid, That there was no King in this caſe; it may be replied, That they who had the Power and Exerciſe of the Royal Juriſdiction, as to Peace and War, Coynage of Money, power of Life and Death, *&c.* which are the higheſt Enſigns of Regal Authority, muſt needs be the Powers *regnant*, though not under the name of *King*, and are within the Statute, 25. *Edw.* 3. *cap.* 2. as a *Queen* alſo is adjudged, and any ſovereign Prince, though under the title only of *Lord*, as was the caſe of *Ireland*, before it was a Kingdom. And if ſo, why not in more ſuch perſons as well as one, that *de facto* exerciſe the Royal Power and Sovereign Authority, under what name or title ſoever ? If upon this Nicety, Judgment be

given againſt me, becauſe the Powers *regnant* wanted the name and formality of a King, I ſhall doubtleſs have very hard meaſure. For the reaſon and equity is the ſame, if the Powers *regnant* had the thing, though not the Title. And where there is the ſame Reaſon, there is the ſame Law, as is a known Rule. Now there is the ſame Reaſon the Subject ſhould be equally indempnified, that acteth under any Sovereign Authority that hath not the name of a King, as if it had. If there had been many Kings, as a *Heptarchy* hath been in *England* heretofore, thoſe would have been underſtood to be within the Statute; and the reaſon and equity of the Statute is the ſame in all caſes. For the Law is made for the benefit and ſecurity of the Subject, whom the Law requires not to examine the right of Soveraignty. Nor is the danger leſs under one Government than another.

The Statute is, for ſecuring the Subject from all dormant Titles, that they may ſafely pay their Allegiance when they receive Protection, and that they may not be in danger of being deſtroyed by two Powers at the ſame time. For that Power which is ſupream and *de facto*, will be obeyed, and make it Treaſon to do otherwiſe, be it right or wrong. And if the Subject be at the ſame time in danger of committing Treaſon againſt the Power *de jure*, then is he in a miſerable condition and ſtate of unavoidable neceſſity, which is provided againſt by the Laws of the Land. Otherwiſe, if he be loyal to the King *de jure*, he ſhall be hanged by the King *de facto*; and if he be faithful to the King *de facto*, he ſhall die by the King *de jure*, when he recovers poſſeſſion.

Againſt this it was, that the Statute of 11. *Hen.* 7. was provided, in the difference betwixt the two houſes of *York* and *Lancaſter*. My Caſe is either the ſame with that, and then I deſire the benefit of that Statute; or elſe, it is new, and then I deſire, as is provided, 25. *Ed.* 3. that it be referred to the Parliament. So that it is either within the Equity of the Statute, 11. *Hen.* 7. or elſe it is a new Caſe, and not to be judged by this Court.

If the Judges in the Reſolves by them delivered, upon any of the particulars before alledged, have not declared that Law that ought to guide them, but their particular Judgments or Opinions, as undertaking to guide the Law, and that in points of ſo grand concern as touch the Subjects Life, in caſe their Judgments after ſhould prove erroneous, the Verdict given upon ſuch Errors, muſt needs be illegal and void. Judgment therefore ought to be ſuſpended till ſuch time as the truth and certainty of the Law may be fully argued and cleared, and that in the proper Court for the hearing and judging of this Caſe. If this be

not

not done, but I be forthwith proceeded againſt (notwithſtanding any thing however rationally or legally alledged to the contrary) by ſuch undue precipitation and giving Sentence, I am (contrary to *Magna Charta*, or Law of the Land) run upon and deſtroyed, without due form and courſe of Law. And I am like to be deprived of Eſtate and Life upon no Law or certain Rule, which was declared before the Fact; no, nor before the Tryal.

Upon theſe Conſiderations, I deſire an *Arreſt of Judgment*, and that *Counſel* may be aſſigned me, and competent time allowed to make good my *Averrements*.

As an Argument to preſs this, I deſire leave of the Court, That the *Petition* of the two Houſes, and the King's *Aſſent* to it, may be read in open Court, atteſted by one that is preſent, who examined and compared it with the Book of Record in the Lords Houſe, by which it evidently appears, that as well the King as both Houſes of Parliament, were agreed, that admitting I were attainted, yet Execution, as to my Life, ſhould be remitted. And if ſo, there is no cauſe to precipitate the paſſing Sentence; eſpecially, when alſo ſuch weighty points in the Law are yet to be argued and cleared, unleſs the Judges will evidently charge themſelves with my innocent Blood.

III. My third Reaſon for an *Arreſt of Judgment*, is the manifeſt newneſs of this Caſe, being ſuch as never happened before in the Kingdom: which withal, is of ſo vaſt a conſequence to people of all ſorts and conditions within this Realm, as nothing more. And being ſo, (as I doubt not with your Lordſhips patience I ſhall make it appear) It is the known Law, witneſſed by *Bracton* and antient approved Law-Books; That in ſuch Caſes, the Judges in the inferiour Courts ought not to proceed, but bring it before the high Court of Parliament.

To prove therefore the newneſs of this Caſe, (beſides what I have already alledged in my Defence, before the Verdict) give me leave to adde that, which yet further ſhews the newneſs and extraordinarineſs thereof. And I beſeech your Lordſhips to let me go on without interruption, in my endeavouring to make it out as clearly, as God ſhall enable me, and as briefly alſo, not to ſpend too much of your time.

In general, I do affirm of this Caſe; That it is ſo comprehenſive, as to take in the very Intereſts of Heaven and Earth: Firſt, Of God the Univerſal Soveraign and King of Kings; Secondly, That of earthly Soveraigns, who are God's Vicegerents; as alſo the Intereſts of all Mankind, that ſtand in the relation of Subjects to the one or both thoſe ſorts of Soveraigns.

This in general. More particularly; within the bowels of this Caſe is that Cauſe of God, that hath ſtated it ſelf in the late Differences and Wars, that have happened and ariſen within theſe three Nations, and have been of more than twenty years continuance: which for the greater certainty and ſolemnity, hath been recorded in the form of a *National Covenant*, in which the generality of the three Nations have been either implicitly involved, or expreſly concern'd, by the ſigning of their Names.

The principal things contained in that Covenant, were the known and commonly received Duties, which either as Men or as Chriſtians, we owed and ſtood obliged to perform either to God, the higheſt and univerſal King in Church and State, or to our natural Lord and Sovereign, the Kings of this Realm, in ſubordination to God and his Laws.

Again, It contains as well the Duties which we owe to every particular and individual perſon, in their ſeveral ſtations and callings, as to the King in general, and our Repreſentative Body in Parliament aſſembled. Theſe Duties we are thereby obliged to yeeld and perform, in conſiſtency with, and in a juſt ſubordination and manifeſt agreeableneſs to, the Laws of God, as is therein expreſſed: And this alſo, in no diſagreement to the Laws of the Land, as they then were.

By this *ſolemn Covenant* and *Agreement* of the three Nations, giving up themſelves in ſubjection to God and to his Laws, in the firſt place, as the Allegiance they owe to their higheſt Soveraign, (as the Creator, Redeemer, Owner and Ruler of all Mankind) they have ſo far intereſted the Son of God in the the Supream Rule and Government of theſe Nations, that nothing therein ought to be brought into practice, contrary to his revealed Will in the holy Scriptures, and his known and moſt righteous Laws.

This Duty which we owe to God, the univerſal King, Nature and Chriſtianity do ſo clearly teach and aſſert, that it needs no more than to be named. For this ſubjection and allegiance to God and his Laws, by a Right ſo indiſputable, all are accountable before the Judgment-ſeat of Chriſt.

It is true indeed, men may *de facto* become open Rebels to God and to his Laws, and prove ſuch as forfeit his Protection, and engage him to proceed againſt them as his profeſſed Enemies. But (with your Lordſhips favour) give me leave to ſay, that that which you have made a Rule for your proceedings in my Caſe, will indeed hold, and that very ſtrongly, in this; that is to ſay, in the ſence wherein Chriſt

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the Son of God is King *de jure*, not only in general, over the whole World, but in particular, in relation to theſe three Kingdoms. He ought not to be kept out of his Throne, nor his viſible Government, (that conſiſts in the Authority of his Word and Laws) ſuppreſſed and trampled under foot, under any pretence whatſoever.

And in the aſſerting and adhering unto the Right of this higheſt Soveraign, (as ſtated in the *Covenant* before mentioned) The Lords and Commons joyntly, before the year 1648, and the Commons alone afterwards, to the very times charged in the Indictment, did manage the War and late Differences within theſe Kingdoms. And whatever defections did happen by Apoſtates, Hypocrites, and Time-ſerving worldlings, there was a party amongſt them, that continued firm, ſincere and chaſt unto the laſt, and loved it better than their very lives; of which number I am not aſhamed to profeſs my ſelf to be; not ſo much admiring the form and words of the Covenant, as the righteous and holy ends therein expreſſed, and the true ſenſe and meaning thereof, which I have reaſon to know.

Nor will I deny, but that, as to the manner of the proſecution of the Covenant to other ends than it ſelf warrants, and with a rigid oppreſſive ſpirit, (to bring all diſſenting minds and tender Conſciences under one Uniformity of Church-diſcipline and government) it was utterly againſt my Judgment. For I alwayes eſteemed it more agreeable to the Word of God, that the Ends and Work declared in the Covenant, ſhould be promoted in a ſpirit of love and forbearance to differing Judgments and Conſciences, that thereby we might be approving our ſelves *in doing that to others, which we deſire they would do to us*; and ſo, (though upon different principles) be found joynt and faithful advancers of the Reformation contained in the Covenant, both publick and perſonal.

This happy Union and Conjunction of all Intereſts in the reſpective duties of all relations, agreed and conſented to by the common ſuffrage of the three Nations (as well in their publick Parliamentary capacity, as private ſtations) appeared to me a Rule and meaſure approved of, and commanded by Parliament, for my action and deportment, though it met with great oppoſition, in a tedious, ſad and long War; and this, under the name and pretext of Royal Authority. Yet, as this Caſe appeared to me in my conſcience, under all its circumſtances of Times, of Perſons, and of Revolutions inevitably happening, by the hand of God and the courſe of his wiſe Providences, I held it ſafeſt and beſt to keep my ſtation in Parliament to the laſt, under the guidance

and

and protection of their Authority, and in purſuance of the Ends before declared, in my juſt Defence.

This general and publick Caſe of the Kingdoms, is ſo well known by the Declarations and Actions that have paſſed on both ſides, that I need but name it, ſince this matter was not done in a corner, but frequently contended for in the high places of the Field, and written even with characters of Blood. And out of the bowels of theſe Publick Differences and Diſputes, doth my particular Caſe ariſe, for which I am called into queſtion. But admitting it come to my lot to ſtand ſingle, in the witneſs I am to give to this Glorious Cauſe, and to be left alone, (as in a ſort I am) yet being upheld with the Authority before aſſerted, and keeping my ſelf in union and conjunction therewith, I am not afraid to bear my Witneſs to it in this great Preſence, nor to ſeal it with my Blood, if called thereunto. And I am ſo far ſatisfied in my conſcience and underſtanding, that it neither is nor can be Treaſon, either againſt the Law of Nature, or the Law of the Land, either *malum per ſe*, or *malum prohibitum*; that on the contrary, it is the duty I owed to God the univerſal King, and to his Majeſty that now is, and to the Church and People of God in theſe Nations, and to the innocent Blood of all that have been ſlain in this Quarrel. Nothing it ſeems will now ſerve, unleſs by the Condemnation paſſed upon my perſon, they be rendred to poſterity Murderers and Rebels, and that upon Record in a Court of Juſtice in *Weſtminſter-hall*. And this would inevitably have followed, if I had voluntarily given up this Cauſe, without aſſerting their and my Innocency, by which I ſhould have pulled that Blood upon my own head, which now I am ſure muſt lie at the door of others, and in particular, of thoſe that knowingly and precipitately ſhall embrew their hands in my innocent Blood, under whatever form or pretext of Juſtice.

My Caſe is evidently new and unuſual, that which never happened before; wherein there is, not only much of God and of his Glory, but all that is dear and of true value to all the good People in theſe three Nations. And (as I have ſaid) it cannot be Treaſon againſt the Law of Nature, ſince the duties of the Subjects in relation to their Soveraigns and Superiours, from higheſt to loweſt, are owned and conſcientiouſly practiſed and yeelded by thoſe that are the Aſſertors of this Cauſe.

Nor can it be Treaſon within the Statute of 25. *Ed.* 3; ſince, beſides what hath been ſaid of no King in poſſeſſion, and of being under Powers *regnant* & Kings *de facto*, as alſo of the Fact in its own nature, and

and the Evidence as to Overt Acts pretended, it is very plain it cannot poſſibly fall within the purview of that Statute. For this Caſe, thus circumſtantiated, (as before declared) is no Act of any private perſon, of his own head, as that Statute intends; nor in relation to the King there meant, that is preſumed to be in the exerciſe of his Royal Authority in conjunction with the Law and the two Houſes of Parliament, if they be ſitting, as the fundamental Conſtitutions of the Government do require.

My Lords, If I have been free and plain with you in this matter, I beg your Pardon: For it concerns me to be ſo, and ſomething more than ordinarily urgent, where both my Eſtate and Life are in ſuch eminent peril; nay, more than my Life, the Concerns of thouſands of Lives are in it, not only of thoſe that are in their graves already, but of all poſterity in time to come. Had nothing been in it, but the care to preſerve my own Life, I needed not have ſtayed in *England*, but might have taken my opportunity to have withdrawn my ſelf into foreign parts, to provide for my own ſafety. Nor needed I to have been put upon pleading, as now I am, for an *Arreſt of Judgment*, but might have watch'd upon advantages that were viſible enough to me, in the managing of my Tryal, if I had conſulted only the preſervation of my Life or Eſtate.

No, my Lords, I have otherwiſe learned Chriſt, than to fear them that can but kill the Body, and have no more that they can do. I have alſo taken notice, in the little reading that I have had of Hiſtory, how glorious the very Heathens have rendred their names to poſterity, in the contempt they have ſhewed of Death, (when the laying down of their Life has appeared to be their Duty) from the love which they have owed to their Country.

Two remarkable examples of this, give me leave to mention to you upon this occaſion. The one is, of *Socrates* the divine Philoſopher, who was brought into queſtion before a Judgment-Seat, as now I am, for maintaining, that there was but one onely true God, againſt the multiplicity of the ſuperſtitious Heathen gods; and he was ſo little in love with his own Life upon this account, (wherein he knew the Right was on his ſide) that he could not be perſwaded by his friends, to make any defence, but would chuſe rather to put it upon the conſcience and determination of his Judges, to decide that wherein he knew not how to make any choice of his own, as to what would be beſt for him, whether to live or to die; he ingenuouſly profeſſing, that for ought he knew, it might be much to his prejudice and loſs, to endeavour longer continuance in this bodily Life.

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The other example, is that of a chief Governour, that (to my best remembrance) had the Command of a City in *Greece*, which was beſieged by a potent Enemy, and brought into unimaginable ſtraits. Hereupon the ſaid Governor makes his addreſs to the Oracle, to know the event of that danger. The anſwer was; That the City ſhould be ſafely preſerved, if the chief Governour were ſlain by the Enemy. He, underſtanding this, immediately diſguiſ'd himſelf and went into the Enemies Camp, amongſt whom he did ſo comport himſelf, that they unwittingly put him to death; by which means, immediately ſafety and deliverance aroſe to the City, as the Oracle had declared. So little was his Life in eſteem with him, when the Good and Safety of his Country required the laying of it down.

The *BILL of EXCEPTIONS*, tranſlated out of the beſt Latine form the Priſoner could procure, No Counſel learned in the Law daring to aſſiſt him in thoſe Circumſtances, without Aſſignment from the Court, which was denied.

Firſt, *Concerning my Impriſonment.*

(1.) I Shall here mention my entrance into this new Scene of Sufferings, under the preſent Power, (after my having been handled at will and pleaſure, under the ſix years Uſurpation of *Cromwel*) which I conceive not to have been at all according to the Law of the Land, as may appear by the 29th chap. of *Magna Charta*, and *Cook* upon it, with many other Statutes and Law-Books: In all which it appears, that the Law of *England* is ſo tender, not to ſay curious, in providing for the Subjects Liberty, that he is not to ſuffer the leaſt reſtraint, confinement or impriſonment, but by the lawfull Judgment of his Peers, or by the Law of the Land: Contrary to all which, I was committed at meer Will and Pleaſure, and have been detained cloſe Priſoner theſe two years, without any cauſe ſpecified, or any particular crime laid to my charge.

Secondly, *Concerning Tranſactions at the Grand Jury.*

(2.) The Grand-Jury of *Middleſex*, without my privity, knowledge or preſence, (after I had been kept a cloſe Priſoner two full years) did meet, take the Depoſitions of Witneſſes, and find the Bill againſt me, which inevitably expoſed me to a Tryal at the Kings Bench Bar,

Bar, for I knew not what; whereas Major *Rolph* and others have had the Right of Engliſhmen granted them, to be preſent at the Grand Juries proceedings; yea, and to have Counſel alſo preſent, to plead any thing in a way of Reaſon or Law, for invalidating the Teſtimony or diſabling the Witneſſes, whereby the Indictment hath been immediately quaſh'd, and ſo, the party accuſed, delivered from any ſhadow of Infamy, by ſo much as appearing in the circumſtances of a Malefactor at any publick Bar of Juſtice.

That this Priſoner had great need of that Priviledge, of being preſent himſelf, or having Counſel and other Friends preſent at the Grand Jury, will appear hereafter, by the ſubdolous and injurious handling of matters there.

Thirdly, *Concerning the Juriſdiction of the Court.*

(3.) The Offences ſuppoſed to be committed by me, are things done not of my own head, but as a Member of the *Long Parliament*, or in purſuance of their Authority. The matters done by me, in the one reſpect or the other, if they be deemed Offences, are puniſhable only in Parliament, and I ought not to be queſtioned for them in any inferiour Court; As *Cook* ſhews in the 4th part of his *Inſtitutes*, chap. 1. concerning the high Court of Parliament. For the Parliament is not confined in their Actings, by the Law which inferiour Courts are tied up to, but in divers caſes are priviledged to act extraordinarily and unaccountably to any but themſelves, or ſucceeding Parliaments. Moreover, That Parliament was extraordinarily commiſſioned, qualified and authorized by expreſs Act of Parliament, beyond all preceding Parliaments, for the Cauſes and Ends declared in the Preamble of the Act for their Eſtabliſhment, accorded and paſſed by the joynt Conſent of King, Lords and Commons, whereby they became unſubjected to Adjournment, Prorogation or Diſſolution, but by their own reſpective voluntary Conſents, to be by them expreſſed and paſſed for that purpoſe, with the Royal Aſſent; which occaſioned his late Majeſty in his *Anſwer* to the *nineteen Propoſitions*, to ſay, *That the Power hereby legally placed in both Houſes, was more than ſufficient to prevent and reſtrain the Power of Tyranny.*

And further, The bringing of this Caſe under the Juriſdiction of this Court, or of any other, but a Parliament, may prove of very dangerous conſequence, in point of Precedent, and moſt diſagreeing to all Rules of Juſtice. For,

First, By the ſame reaſon that I am queſtioned in this Court, not

only every Member of Parliament, but the very Houſes themſelves, with all their Debates, Votes and Orders, may not only be queſtioned, but referred to a Petty Jury, and ſo come to be judged and ſentenc'd by a Court inferiour to themſelves, which Judges in all times have diſclaimed and acknowledged to be out of their power, according to the known Rule, *Par in pares non habet imperium, multo minus in eos, qui majus imperium habent.*

Secondly, In ſuch caſe, the Parties accuſed, will be debarred of Evidence or Witneſs for their Juſtification and Defence. For no Members, &c. preſent at Debates in Parliament, (who are the onely eye and ear-witneſſes of what is ſaid and done there) ought to diſcover the Counſels of the Houſe.

Fourthly, *Concerning the Indictment.*

1. I have not been permitted to have a copy or ſight of the Indictment, nor ſo much as to hear it read in Latine, which is the original Record of the Court, and ought to be the foundation of their whole proceeding with me. I often deſired theſe things of the Court; yea, or at leaſt, to have but the Tranſcripts of ſome particular clauſes in the Indictment, to enable me to ſhew the deficiencies thereof in Law, (all which, others in ſuch caſes have often obtained) but nothing would be granted herein.

This then was my hard lot and uſage; I was put (after two years cloſe Impriſonment) to anſwer for my Life, to a long Indictment, read in Engliſh, which whether it were rightly tranſlated how ſhould I know, that might not hear the Original Record in Latine? Counſel alſo learned in the Law, were denied me, though preſſed for by me, again and again, before I pleaded. And had they been granted, what could they have ſaid as to defects of Law in the Indictment, unleſs they might have a Copy of it? What can any Counſel ſay to any petty buſineſs concerning any part of a man's Eſtate that's in controverſie, unleſs they may have a leiſurely view and peruſal of the Writings thereabouts? much more ſure will it appear requiſit, to the reaſon of all mankind, when a man's whole Eſtate, Life and all are at ſtake. 'Tis true, before I pleaded, this Court promiſed I ſhould have Counſel aſſigned me after pleading, (*God forfend elſe*, ſaid the Lord Chief Juſtice) but 'tis as true, I never could yet ſee that promiſe made good. All things tending to a fair Tryal, were promiſed me in general before pleading, but every material particular for the juſt defence of my Life, hath been denied

denied me ever ſince. And my Tryal for Life was hudled up the next day of my appearing before you; The Jury (as was told me) muſt not eat or drink, till they had done their work; (ſo the more than forty *Jewry-men* that reſolved to kill *Paul*, Act. 23. 21.) But why ſuch haſte and precipitancy for a man's Life, that's more than Meat or Eſtate, when you can let Civil Cauſes about mens Eſtates depend many years? and if an erroneous Judgment be paſſed in ſuch matters, 'tis reverſible; But if innocent Blood be ſpilt, it cannot be gathered up again, as the wiſe woman of *Tekoah* ſaid, 2 *Sam.* 14.

2. But ſecondly then, As to defects in the Indictment, which I was in ſome meaſure enabled to obſerve from that broken hearing thereof, that was afforded me here in the Court; I ſay, there are many, and thoſe very conſiderable; and by the Law of *England* I ought not to have been urged to plead or make anſwer to ſuch an illegal and defective Indictment.

1. There is no ſufficient Overt Act therein alledged, of the Priſoner's imagining the King's Death, or that he had any the leaſt intention that way.

2. The Levying of a War, is alledged in *Southwark*, and cannot therefore be tryed by a Jury of *Middleſex*; *Dyer*, fol. 234. and the 3d part of *Cook's Inſtitutes*, fol. 34.

3. There is uncertainty and obſcurity in the main thing alledged againſt me in the Indictment; to wit, *That I, together with a multitude of perſons, to the number of a thouſand, unknown to the Jury, &c.* whereas no Criminal Act can be tryed that is not certain; *Certa res debet eſſe quæ deducitur in Judicium.*

4. The Treaſon laid to my charge, is alledged to have been committed with a multitude of other falſe Traitors, which were pardoned by the Act of Indempnity; ſuch ſuppoſed crimes therefore of theirs cannot be remembred or alledged, without a manifeſt breach of the Act of Indempnity and Oblivion.

The Indictment is, or ought to be founded on ſome clauſe or branch of 25. *Ed.* 3. chap. 2. But no ſuch Overt Act is alledged in the Indictment, or proved by Witneſſes, as doth diſcover that I had any intention to kill, depoſe or hold out the King from the poſſeſſion and exerciſe of his Regal Power.

Whereas I am accuſed of *compaſſing or imagining the Death of the King*; this muſt be underſtood of his natural or perſonal, not politick capacity; for in this latter ſence, the Law ſayes, *the King cannot die.*

Firſt then, to compaſs only the Depoſition of the King, is not within

the words of that Statute, (ſeveral Kings have been depoſed by Parliaments ſince the Conqueſt) and as to my compaſſing or deſigning the natural death of the King's Perſon, with what colour can I be accuſed of ſuch intentions, in the circumſtances the King at that time was in beyond the Seas?

Secondly, The aſſembling of men together, without any hoſtility or injury offered to any perſon, but for a man's own ſecurity and defence, in a time of confuſion and diſtraction, is not Levying War, or Treaſon at the Common Law, or by that Statute. Yea, in this Caſe, and at the ſeaſon wherein ſuch an Act as this is alledged, it might be ſuppoſed to be done for the King's Reſtoration as well as in oppoſition thereunto; and the moſt favourable and advantagious conſtruction ought to be made and put upon the Priſoner's actings or words, where there is ambiguity, ſo that they may be taken or interpreted divers wayes. For the Law alwayes preſumeth actions to be innocent, till the contrary be manifeſtly proved. However, in a time of vacancy or an *Interregnum*, when the Foundations of Government are out of courſe, by the Law of Reaſon, Nature, and Common Prudence, every man may ſtand upon his own guard, endeavouring his own ſecurity and protection from injury and violence.

Thirdly, To be adherent to the King's Enemies within his Realm, &c. cannot, ought not to be underſtood of any adhæſion to a Parliament, wherein the King by Law is ſuppoſed alwayes preſent, as a part thereof. Nor can the *Long Parliament* be called the King's Enemies, without overthrowing the Act of Indempnity, which the King hath declared to be the Foundation of the Nations preſent Peace and Security.

Laſtly, The Treaſons alledged in the Indictment, are ſaid to have been committed when the King was out of poſſeſſion; So the Indictments runs, *to keep out the King, &c.* Now my Lord *Cook* in the third part of his *Inſtitutes*, fol. 7. ſaith, *A King* de jure, *and not* de facto, *is not within this Statute*; *Againſt ſuch a one no Treaſon can be committed. For if there be a King* regnant *in poſſeſſion, though he be* Rex de facto, *and not* de jure, *yet is he* Seignior le Roy, *within the purview of this Statute*; *and the other that hath Right, and is out of poſſeſſion, is not within this Act. Nay, if Treaſon be committed againſt a King* de facto, & non de jure, *and after the King* de jure *cometh to the Crown, he ſhall puniſh the Treaſon done to the King* de facto.

And after, in the ſame place he ſaith, *That by Law there is alwayes*

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a King, in whoſe Name the Laws are to be maintained and executed; otherwayes Juſtice would fail. The Act alſo of 11. *Hen.* 7. was made for ſecurity of the Subject on this behalf. The word *King* alſo may and ought to be taken largely for any Sovereign Power, in a King or Queen, as *Cook* in the place fore-quoted, ſhews; and why not by the ſame reaſon, in a *Protector*, though a Uſurper, or any other perſons, one or more, in whom Soveraignty is lodged, or that have all the badges of Soveraignty, as the calling of Parliaments, enacting of Laws, coining of Money, receiving Forreign Ambaſſadors, &c.? His Majeſty that now is, is granted by the very Indictment to have been then out of poſſeſſion: If ſo, then was there either ſome other King, or what was equivolent, ſome Sovereign Power in actual poſſeſſion and exerciſe, or none. If the former, then was there a King *de facto*, ſo no Treaſon could be committed againſt him that was King *de jure* only: If the latter, then the Government was diſſolved, no allegiance was due to any perſons, and ſo no offence could be properly Treaſon, within the Statute.

But had the late *Protector* had the name and ſtile of a King, no Treaſon could have been committed againſt the King *de jure* only. Now God forbid that you ſhould give away my Life upon ſuch niceties, becauſe a uſurping Protector was not clothed with the Title as well as Power of a King. The Protector or any Uſurper's taking or not taking the Title of a King, in caſe he have the Power, cannot alter the ſtate of my ſuppoſed crime. You ought not to be byaſſed by popular Reports concerning me. 'Tis eaſier to be innocent, than ſo reported. The one is in our own power, not the other.

Fifthly, *Concerning the Evidence.*

1. No allegation was directly proved by two poſitive lawful Witneſſes, as in this caſe it ought to be.

2. One of the Witneſſes for the King, confeſſed in open Court, that to his knowledge my hand had been counterfeited, to my prejudice and dammage, in great Sums of Money; yet Orders pretended to be ſigned by me, (wherein my hand may as well be counterfeited) are taken as Evidence againſt me.

3. The Iſſue of the whole Cauſe depended on the ſolution of ſome difficult Queſtions, of ſo high a nature and great importance, as could not ſafely be determined but in the high Court of Parliament; As,

1. *Whether the Long Parliament, called in* Novemb. 1640, *were diſſolved by the late King's Death?* 2. *Whether*

2. *Whether the ſucceſſive remaining Powers, that exerciſed the Royal or Supream Authority from* 1648, *to the Reſtoration of his now Majeſty, were not within the true ſenſe and meaning of* 25. Edw. 3. *and* 11. Hen. 7?

As to other pertinent Queries, thou mayeſt ſee them, Reader, in other parts of this Tryal.

That which remains, as an *Appendix to this Bill of Exceptions*, is to lay before thee the Grounds which plainly ſhew that there was a downright Conſpiracy in Sir *Henry Vane*'s Tenants and others, to proſecute him for Life and Eſtate, under colour and pretence of Juſtice.

1. Preſently after I was committed to the *Tower* for High Treaſon, and made a Cloſe-Priſoner, Mr. *Oneale*, Sir *William Darcy* and Dr. *Cradock* obtained an Order from the King, to ſeize and take into their poſſeſſion, all the Eſtates of ſuch perſons, that were already or ſhould be forfeited to his Majeſty.

Hereupon the ſaid Mr. *Oneale* and Sir *Will. Darcy* appointed ſome under them in the Biſhoprick of *Durham*, (by name, *Thomas Bowes* Eſq; now deceaſed, and Capt. *William Darcy*) to joyn with the ſaid Dr. *Cradock*, to put in execution the ſaid Warrant, as their Deputies, who thereupon went to *Raby Caſtle*, and demanded the Rent-Books of *Thomas Mowbray* my Steward, offering him his place under them, which he refuſed.

Contrary to this proceeding, Sir *Edward Cook* expreſly declares, "That before Indictment, the Goods or other things of any Offender, "cannot be ſearched, inventoried, or in any ſort ſeized; nor after In-"dictment, ſeized, removed, or taken away, before Conviction or At-"tainder. *Inſtitut.* 3d part, chap. 133. concerning the Seizure of Goods, &c. for Offences, &c. before Conviction.

2. At the Inſtance and Proſecution of my Tenants and others, an Order was made by the Houſe of Commons (not of the Lords) requiring the Tenants of ſuch perſons as were excepted out of the *General Pardon*, to detain their Rents in their own hands. By pretence of this Order, (though that Parliament that made it, were diſſolved) The Tenants refuſed to pay their reſpective Rents, as they grew due, contrary to all Law and Equity; and joyned together in open defiance and conſpiracy againſt their Landlord.

3. The ſaid Tenants, (when legally proſecuted in his Majeſties Courts at *Weſtminſter*, for the recovery of the ſaid Rents out of their hands)

hands) did petition the late Houſe of Commons to put a ſtop to ſuch legal Proſecution and Suits ; which Motion of theirs, put the Houſe into a great heat and violence againſt me, inſomuch that they had almoſt paſſed a Vote to ſequeſter all my Eſtate, though unheard or unconvicted.

4. *William Watſon* of *Cock-field*, and other of the ſaid Tenants, have continued in *London* to carry on this Conſpiracy againſt me, by whoſe means, with others, the King hath been importuned to ſend for men from the Iſle of *Silly*, in order to this Tryal.

5. By common fame (which, at leaſt, affords a ſtrong preſumption) my Goods and Eſtate have been long begg'd by ſeveral perſons, and granted : whereas the begging of the Goods and Eſtate of any Delinquent, accuſed or indicted of Treaſon, before he be Convicted and Attainted, is utterly unlawful ; becauſe till then, nothing is forfeited to the King, and ſo, not his to diſpoſe of ; as Sir *Edward Cook* ſhews, in the fore-mentioned Chapter about the Seizure of Goods, &c.

6. I am credibly informed, that about *December* laſt, a certain Captain came from the Duke of *Albemarle*, to Capt. *Linn*, with threatning language, that if he would not confeſs things againſt Sir *Henry Vane*, he ſhould be fetch'd up before the Council and made to do it. *Linn* anſwered, he knew nothing againſt Sir *Henry Vane*, nor had any Orders from him, but from the Parliament and Council.

The ſame Captain came again, about a fortnight after, from the Duke of *Albemarle*, with a parcel of fine words, that if he the ſaid *Linn* would teſtifie, that Sir *Henry Vane* was in the head of his Regiment, and that he received Orders from him, the Duke of *Albemarle* would gratifie him with any civility he ſhould deſire. *Linn* replied, he knew no Regiment Sir *Henry Vane* had, but that it was the Parliaments and Council of States Regiment. The ſame Captain came again to him, from the Duke of *Albemarle*, and told him, The Duke deſired him to teſtifie Sir *Henry Vane's* being in the head of his Regiment, and that he received Orders from him, to fight Sir *George Booth*; *Linn* replied, he knew no ſuch things. The Captain told him, as from the Duke, he ſhould have any Place or Office in the Court. Be not afraid to ſpeak, ſaid he, I warrant you, we ſhall hang Sir *Henry Vane*, for he is a Rogue.

7. I am credibly informed, that one of the Grand Jury declared, that after the Bill of Indictment againſt me, was brought in, ſome from the King's Counſel came to deſire them, they would pleaſe to come into the inward Court of Wards ; Upon which, one of the Jury ſaid,

they

they were there to judge of matters brought before them, and ought not to go in thither; but if the Counſel had any thing to ſay, they ought to come to them. This was ſeconded by ſome; others ſaid, they were the King's Counſel, and it was but matter of civility to grant them their Requeſt: whereupon they went into the inward Court of Wards, where the King's Counſel were, to wit, Attorney-General *Palmer*, Sollicitor-General *Fynch*, Serjeant *Glyn* and Serjeant *Keeling*. After a while, they cauſed all to withdraw but the Jury. Then the Clerk read the Indictment in the uſual form for Levying War from 1659. After it was read, one of the Counſel told them, It was a Bill of High Treaſon againſt his Majeſty, and they were to conſider of it according to their Evidence. Then they proceeded to examine their Witneſſes.

Jefford ſaid, Sir *Henry Vane* offered him a Commiſſion to go againſt Sir *George Booth*; which, ſaid Serjeant *Keeling*, was to go againſt the King.

Wright, being examined whether he ſaw Sir *Henry Vane* in the Council, ſaid, *Yes*. The Attorney-General replied, that if he was amongſt them, they might find the Bill upon that.

Upon this, the Jury withdrew, and were by themſelves. Then Sir *John Croply*, the Foreman, ſaid, *We muſt paſs this Bill*; at which all the Jury were ſilent. At laſt, one ſtood up and ſaid; *This Bill contains matter of Fact, and matter of Law. Some of this Jury, to my knowledge, were never of any Jury before, as well as I, therefore ignorant of the Law, (in ſo difficult and unuſual a point as this is) and conſequently could not give in their Verdict, as to Law, but only Fact.* Several others of the Jury ſeconded him in this, and proteſted againſt giving in their Verdict, as to matter of Law; notwithſtanding all which, the Bill was carried up to the King's Bench.

8. On the day of my Arraignment, an eminent perſon was heard to ſay, I had forfeited my head, by what I ſaid that day, before ever I came to my Defence: what that ſhould be, I know not, except my ſaying in open Court, *Soveraign Power of Parliament*, which the Attorney-General writ down, after he had promiſed at my requeſt, no exception ſhould be taken at words. And whole Volumns of Lawyers Books paſs up and down the Nation with that Title, *Soveraign Power of Parliaments*.

9. Six moderate men, that were like to conſider what they did, before they would throw away my Life, were ſummoned to be of my Petty Jury, which the King's Counſel hearing, writ a Letter to one of

of the Sheriffs, to unſummon them; and a new Liſt was made, the night immediately before the day of Verdict, on purpoſe that the Priſoner might not have any knowledge of them, till preſented to his view and choice in *Weſtminſter-hall.* Yet one of the fourty eight of this Liſt, (who ſaid he would have ſtarv'd himſelf before he would have found Sir *Hen. Vane* guilty of Treaſon) was never called, though he walked in the Hall all the while. And in that Hurry of thoſe that compaſſed him about, he being alone, ſtripp'd of all aſſiſtance, Sir *William Roberts* Foreman, and Sir *Chriſtopher Abdy*, were ſworn by the Court, before I was aware; ſo my challenging them, might ſeem a perſonal diſobliging and exaſperation of them againſt me, after they were ſworn and fixed.

The Sollicitor alſo had a long whiſper with the Foreman of the Jury, in the Court, before they went to Verdict, telling him, *The Priſoner muſt be a Sacrifice for the Nation, &c.*

Suddenly after which I am here called to receive my Sentence.

10. After the day of my Tryal, the Judges went to *Hampton-Court.*

11. None were more forward to abſolve the King from his Grant about my Life, than they that had appeared moſt forward in promoting the Bill by way of Petition to the King, for it. This Grant, being upon Record, may ſeem to have the ſame validity that other Acts of Parliament have, which are ſtill but the two Houſes Petition to the King for his Aſſent to the Bills by them drawn up and paſſed. They uſed this, as a means to induce the King to exempt me from all benefit of the Act of Indempnity and Oblivion, and then at laſt perſwade and abſolve him from making good this Grant alſo, thereby depriving me of all viſible relief for my Life. I conceived my Life as ſecure by that Grant, as others Lives or Eſtates are by the Act of Indempnity it ſelf; for what is that but the Bill of both Houſes, with the King's Aſſent to it, upon their Petition?

The *PETITION* of both Houſes of Parliament to the King's moſt excellent Majeſty, on the behalf of Sir *Henry Vane*, and Col. *John Lambert*, after they left them uncapable of having any benefit of the Act of Indempnity.

To the King's moſt Excellent Majeſty.

The humble Petition of the *Lords* and *Commons* aſſembled in PARLIAMENT.

Sheweth,

THat Your Majeſty having declared your gracious pleaſure to proceed only againſt the immediate Murderers of your Royal Father: We your Majeſties moſt humble Subjects, the Lords and Commons aſſembled, not finding Sir Henry Vane *nor Col.* Lambert *to be of that number,*

Are humble Suiters to Your Majeſty, that if they ſhall be Attainted, that Execution, as to their Lives, may be remitted;

And as in duty bound, &c.

The ſaid *Petition* being read, it was agreed to, and ordered to be preſented to his Majeſty by the Lord Chancellor.

The Lord Chancellor reported, That he had preſented the Petition of both Houſes, to the King's Majeſty, concerning Sir *Henry Vane* and Col. *Lambert*, and his Majeſty grants the Deſires in the ſaid Petition.

John Browne, Cler. Parliamentorum.

Concerning the Proceedings of the Court.

1. THe Judges denied Counſel to the Priſoner, on this pretext, that they (as they were to be) would be his Counſel. They are the King's Commiſſary Judges, preferred and paid for their work by the King, who (in this caſe) was, through evil and falſe ſuggeſtions, rendred the Priſoners chief or only Adverſary, whoſe Death he ſtood accuſed of imagining and compaſſing. What Counſel or Aſſiſtance the Priſoner was like to have from them, let the World judge.

2. His Jury conſiſted of perſons that had been engaged againſt him, in that very Controverſie and Cauſe for which he was tryed. A Forreigner, in any Criminal Caſe amongſt us, may require ſix of his Jurors to be of his own Countrymen; a French-man, ſix French-men; a Dutch-man, ſix Dutch-men; &c. There was but one here (that was ſuſpected only to have ſomething of an Engliſh-man in him) ſworn of the Jury; and the Lord Chief Juſtice ſharply rebuked the Clerk of the

the Court, alledging, that he knew not but he might have brought bread and cheeſe in his pocket, and would keep them all night, with other words to like purpoſe.

3. The Priſoner was not ſuffered to ſpeak a word to the Jury, after the King's Counſel had ſpoken, to take off the aggravating gloſſes they had put upon his pretended crime: and the Judges, (that ſaid they would be the Priſoner's Counſel) diſmiſſed the Jury, poſſeſſed with the laſt exaſperating charge, given by thoſe, who were both the Accuſers and profeſſed Counſel againſt him.

4. The Priſoner, on his Sentence-day, challenged the Sollicitor before the Court, as to the injury done him on the day of his Tryal, by his large and bitter Invective, which he had not liberty to reply to, (for the vindicating of his own Innocency, and unprejudicing the Juries underſtanding) in the fitteſt ſeaſon.

The Judges that had promiſed him (before pleading) they would be his Counſel (inſtead of relieving him herein, as in all reaſon they ought) afforded him no other anſwer, but a ſharp Rebuke, for criminating and ſcandalizing the Court, together with ſome threatning expreſſions. But what need had he to regard their threatnings, that he ſaw reſolved to paſs a Sentence of Death upon him, ſay what he would?

The main thing he charged the Sollicitor with, was his ſaying openly in Court, *that he muſt be made a publick Sacrifice*, (ſhewing no reaſon why) and of whiſpering to the Foreman of the Jury, in the Court, before they went to Verdict; a thing notoriouſly againſt all Law and Reaſon. Amongſt other things, he had alſo ſaid, *What Counſel did the Priſoner think would (or durſt) ſpeak for him, in ſuch a manifeſt Caſe of Treaſon, unleſs he could call down the heads of thoſe his fellow-Traitors* (Bradſhaw *or* Cook) *from the top of Weſtminſter-Hall?* (or to that effect) when as there were able heads in the bottom of *Weſtminſter-hall*, ready to have ſpoken to his Caſe, if they might have been aſſigned by the Court. But what may not be ſaid, when nothing may be replied? For a perſon, that is deſigning his own Intereſt, Honours, Advantages and Preferments, to have the laſt word to the Jury, againſt a Priſoner that ſtands at the Bar in danger of his Life, (and that, a perſon of ſo generally acknowledged worth and publick concern) and to perform it with impertinent flaſhes of Wit, and declamatory flouriſhes of Rhetorick, (ſending away the Jury with the freſh and laſt impreſſions of all that noiſe and buzze of his gloſſes upon the whole matter, and having with irritating expreſſi-

ons misrepresented and aggravated the supposed crimes)is a thing to be hissed off the stage of this earth,by the common Reason of all mankind.

What worse circumstances can a Prisoner be in, than to stand at a Bar of Justice to be tryed, and there hear his professed Accuser and Adversary, misrepresenting, miscalling, and aggravating the actions he is questioned for, pressing all upon the Jurors consciences with the greatest edge and flourish of all the Art, Wit and Eloquence he is furnished with (as *Tertullus* served *Paul*) and then be deprived of all possible defence against his slanderous and injurious suggestions? *Paul* was not so served; he had the last word to his Jury, when *Tertullus* had done, *Acts* 24. But the children of this world are wise in their generation; they knew well they had to deal with one, that had been experienced for twenty years together, to be a person of a very happy and unparallel'd dexterity in taking off the paint and false appearances that others (by premeditated Speeches) could put upon ill matters, with an extemporary breath.

If it be said, he had fair warning beforehand, to say all that he had to mind the Jury of, and that he was not to speak after the King's Counsel. It is answered; Though this were hard at best, and indeed, not at all suitable to the true and lawfull Liberties of English-men, yet were it more tolerable, in case the King's Counsel had started no new thing against the Prisoner, used no provoking and unworthy expressions, or made no new and unforeseen glosses upon the matter he stood charged with. For then the Prisoner might be presumed to have sufficiently obviated beforehand, any thing that would be said by the Counsel, (had they only recapitulated) and so (probably) might have rendred his Jury somewhat uncapable of being prejudiced thereby against him, unless they were as willing to abuse him as the Counsel. But here were many things said at random, against all Sense, Law and Reason, (as if *Tully* had been characterring a treacherous *Catiline*) and the innocent Prisoner must be mute, and suffer the Jury to be dismissed, and sent to pass their Verdict on his Life, without the least possibility of Remedy.

Put this and all the rest together, (to wit, that the Jury themselves were of the opposit party to him in the late Wars and whole Cause in question, depending before them) and it had been far better for the Prisoner, to have cast lots on a Drum-head for his Life, as a Prisoner of War, than to be so tryed in a time of Peace, unless it can be reasonably presumed, that they that would have killed him any time this twenty year in the field, should now be like to spare his Life at the Bar.

Occa-

Occaſional Speeches before his Tryal.

HE ſaid, there was ſomething in this Cauſe, that could never be conquered, and that he bleſſed the Lord, it had never been betrayed by him, or conquered in him. And before this, in a Letter from *Silly* to a Friend, he ſaid, *God's Arm is not ſhortned; doubtleſs great and precious Promiſes are yet in ſtore to be accompliſhed, in and upon Believers here on Earth, to the making of Chriſt admired in them. And if we cannot live in the power and actual fruition of them, yet if we die in the certain foreſight and imbracing of them by Faith, it will be our great bleſſing. This dark night and black ſhade, which God hath drawn over his work in the midſt of us, may be (for ought we know) the ground-colour to ſome beautiful Piece, that he is now expoſing to the light.*

When he came from his Tryal, he told a Friend, *he was as much overjoyed, as a chaſt Virgin that had eſcaped a Rape: for,* ſaid he, *neither flatteries before, nor threatnings now, could prevail upon me; and I bleſs God that enabled me to make a ſtand for this Cauſe; for I ſaw the Court reſolved to run it down, and (through the aſſiſtance of God) I reſolved they ſhould run over my Life and blood firſt.*

June 13. *being Friday, the day before his Execution.*

On this day, liberty being given to Friends to viſit him in the *Tower*, he received them with very great chearfulneſs, and with a compoſed frame of ſpirit, having wholly given up himſelf to the will of God. He did occaſionally let fall many gracious expreſſions, to the very great refreſhing, and ſtrengthning of the hearts of the hearers. To wit, *That he had for any time theſe two years made Death familiar to him, and being ſhut up from the World,* he ſaid, *he had been ſhut up with God, and that he did know what was the mind of God to him in this great matter; but, that he had not the leaſt recoyl in his heart, as to matter or manner of what was done by him; And though he might have had an opportunity of eſcaping, or by policy might have avoided his Charge, yet he did not make uſe of it, nor could decline that which was come upon him.*

It being told him by a Friend, that his Death would be a loſs to the People of God: He anſwered, *that God would raiſe up other Inſtruments to ſerve him and his People.* And being deſired to ſay ſome-

thing,

thing, to take off that charge of *Jeſuitiſm*, that was caſt upon him; He ſaid, *That he thought it not worth the taking notice of; for if it were ſo, he ſhould never have been brought to this.* A Friend ſaid, Sir, the Lord hath ſaid, *Be thou faithful unto Death, and I will give thee a Crown of Life.* The Lord enable you to be faithful. He replied, *I bleſs the Lord, I have not had any diſcompoſure of ſpirit theſe two years, but I do wait upon the Lord, till he be pleaſed to put an end to theſe dayes of mine, knowing that I ſhall change for the better: For in Heaven there is an innumerable company of Angels, the Spirits of Juſt men made perfect, and JESUS the bleſſed Mediator of the New Covenant. There are holy and juſt Laws, a pure Government, bleſſed and good Company, every one doing their duty; here we want all theſe. This is that City ſpoken of,* Pſal. 48. 1, 2. *That ſtrong City, that cannot be moved,* Iſa. 26. *Why therefore ſhould we be unwilling to leave this eſtate to go to that? And although I be taken from hence, yet know aſſuredly, God will raiſe up unto you Inſtruments out of the duſt.* Another ſaid to him; Sir, There is nothing will ſtand you in ſtead, but juſtifying Faith in the Blood of Jeſus. To which he ſaid, *There are ſome, that through Faith in the Blood of* Chriſt, *do eſcape the pollutions of the world, yet afterwards are entangled therein again; others there be, that are carried through the greateſt ſufferings, by a more excellent, ſpiritual ſort of Faith in the Blood of* Jeſus, *and endure them with the greateſt joy.*

He further ſaid, We were lately preaching a Funeral Sermon to our ſelves, out of *Heb.* 11. 13, 16. where thoſe bleſſed Witneſſes do declare themſelves to be pilgrims and ſtrangers on the Earth, and do deſire a better Country, that is, a heavenly; *Wherefore God is not aſhamed to be called their God, for he hath prepared for them a City.* And if God (ſaid he) be not aſhamed to be called my God, I hope I ſhall not be aſhamed to endure his Croſs, and to bear his Reproach, even whatſoever it be that man can impoſe upon me, for his ſake. Yea, he will enable me not to be aſhamed. I have not the leaſt reluctancy or ſtrugling in my ſpirit againſt Death. I deſire not to live; but my will is reſigned up to God in all. Why are you troubled? I am not. You have need of Faith and Patience to follow the Lord's Call. This ought chiefly to be in our eye, *the bringing Glory to our heavenly Father.* Surely God hath a glorious Deſign to carry on in the world, even the building up of *David*'s Throne to all Generations. For he is compleating all his precious Stones, making them Heaven-proof, and then laying them together in the Heavenly Manſions, with the

the Spirits of the Juſt, till it be a compleat City. When the Top-ſtone thereof is laid, then will he come in all his Glory.

This day, is a day wherein Chriſt appears in the Clouds. Oh, that every one of our eyes may ſee him, and conſider how we have pierced him in his Members, that we may mourn! Our Lord Jeſus ſaid, *Father, I have finiſhed the work that thou gaveſt me to do, and now (Father) glorifie me with the ſame Glory I had with thee before the world was.* Our Lord was capable of his Glory beforehand; and although we be not ſo capable as he, yet this we know, he wills the ſame to us, *that where he is, we may be alſo, that we may behold his Glory.* And he is our Head, in whom we are made capable, being choſen in him before the foundation of the world; and he hath ſet us in heavenly places in Chriſt Jeſus. The hope of this Glory ſweetens all our Sufferings.

I know, a day of deliverance for Sion will come. Some may think the manner of it may be, as before, *with confuſed noiſe of the Warriour, and garments rolled in Blood*; but I rather think it will be with *burning, and fewel of fire.* The Lord will ſend a fire, that ſhall burn in the *Conſciences* of his Enemies, *a worm that ſhall not die, and a fire that ſhall not go out.* Men, they may fight againſt; but *this* they cannot fight againſt.

It being told him by a Friend, that he had delivered him up unto God as a Sacrifice, though (ſaid he) I have day and night prayed that this cup might paſs from you. He replied, *That he bleſſed God, he had offered himſelf up firſt to God, and it was a rejoycing to him that others had given him up alſo. And why,* ſaid he (ſpeaking before all the company) *ſhould we be frighted with Death? I bleſs the Lord, I am ſo far from being affrighted with Death, that I find it rather ſhrink from me, than I from it.*

His Children being then preſent, to take their leave of him, he ſaid, *I bleſs God, by the eye of Faith I can ſee through all my Relations to Mount Sion, and there I ſhall need none of them. I have better Acquaintance in Heaven. Theſe Relations are nothing to thoſe I ſhall meet with there.* Then kiſſing his Children, he ſaid, *The Lord bleſs you, he will be a better Father to you: I muſt now forget that ever I knew you. I can willingly leave this place and outward enjoyments, for thoſe I ſhall meet with hereafter, in a better Country. I have made it my buſineſs, to acquaint my ſelf with the ſociety of Heaven. Be not you troubled, for I am going home to my Father.*

I die in the certain faith and forefight, That this Cauſe ſhall have

its

its Reſurrection in my Death. My Blood will be the Seed ſown, by which this glorious Cauſe will ſpring up which God will ſpeedily raiſe.

The laying down this earthly tabernacle is no more, but throwing down the mantle, by which a double portion of the Spirit will fall on the reſt of Gods People. And if by my being offered up, the Faith of many be confirmed, and others convinced and brought to the knowledge of the Truth, how can I deſire greater honour and matter of rejoycing?

As for that glorious Cauſe, which God hath owned in theſe Nations, and will own, in which ſo many Righteous ſouls have loſt their lives, and ſo many have been engaged by my countenance and encouragement, ſhall I now give it up, and ſo declare them all Rebels and Murderers? No, I will never do it: That precious Blood ſhall never lie at my door. As a Teſtimony and Seal to the Juſtneſs of that Quarrel, I leave now my Life upon it, as a Legacy to all the honeſt Intereſt in theſe three Nations. Ten thouſand Deaths, rather than defile my Conſcience, the chaſtity and purity of which I value beyond all this world; and God is not a little concern'd on my behalf. He will certainly judge my Caſe, wherein is the bowels of this good Cauſe, and in the bowels of that, the Kingdom of Jeſus Chriſt, which will ſpeedily be ſet on foot in theſe Nations. I would not for ten thouſand Lives, part with this Peace and Satisfaction I have in my own heart, (both in holding to the Purity of my Principles, and to the Righteouſneſs of this good Cauſe) and the aſſurance I have that God is now fulfilling all theſe great and precious Promiſes, in order to what he is bringing forth. Although I ſee it not, yet I die in the faith and aſſured expectation of it, Hebr. 11. 13. *And the eternal bleſſedneſs God hath prepared for me, and is ready now to receive me into, will abundantly make up all other things. Through the power and goodneſs of God, I have had in this Tryal of mine, ſuch a proof of the integrity of my own heart, as hath been no ſmall joy to me.*

The expreſſions of grief from his Friends, he ſaid, *were but ſo many lets and hindrances to him, in the view he had of that Glory he was going to poſſeſs, that heavenly City and Commonwealth, where he ſhould behold the face of God and of his Son, in a ſociety of Angels, and the Spirits of Juſt men made perfect.*

Some few dayes before his Suffering, his thoughts were much fixed upon *Pſal.* 118. 27. where are theſe words; *God is the Lord, which hath ſhewed us light; bind the Sacrifice with cords, even unto the horns of the Altar.* From this, he ſaid, that God gives light, and is light to his People, under their darkeſt circumſtances and ſufferings; and

and when he calls them forth to ſuffer, he binds them as Sacrifices with cords, in three reſpects: Firſt, by the Cord of his Love to us, for he loved us firſt. Secondly, by the Cruelty of our Enemies. Thirdly, by our Reſignation-duty and love to him. Theſe three Cords have bound me ſo faſt, I cannot ſtir.

Upon Friends perſwading him, to make ſome ſubmiſſion to the King, and to endeavour the obtaining of his Life; he ſaid, *If the King did not think himſelf more concern'd for his Honour and Word, than he did for his Life, he was very willing they ſhould take it. Nay, I declare* (ſaid he) *that I value my Life leſs in a good Cauſe, than the King can do his Promiſe.* And when ſome others were ſpeaking to him, of giving ſome thouſands of pounds for his Life; he ſaid, *If a thouſand farthings would gain it, he would not give it: And if any ſhould attempt to make ſuch a bargain, he would ſpoil their market: For I think the King himſelf is ſo ſufficiently obliged to ſpare my Life, that it is fitter for him to do it, than my ſelf to ſeek it.*

He rejoyced exceedingly, that God aſſiſted him ſo eminently in bearing his Teſtimony with faithfulneſs even unto Death; and that he as willingly laid down his Life, and with as much ſatisfaction, as ever he went to bed. For in a natural ſickneſs, Death ſeized on the body, without any conſent of the mind; but this was a free action of his mind, without any conſtraint upon his body.

Mention being made to him of the cruel proceedings againſt him; *Alas* (ſaid he) *what ado they keep to make a poor creature like his Saviour!* In diſcourſe he ſaid, *If the ſhedding of my Blood, may prove an occaſion of gathering together in one, the diſperſed Intereſts and Remnant of the Adherers to this Cauſe* (*of whatever differing perſwaſions*) *I ſhould think ten thouſand Lives* (*if I had them*) *well ſpent in ſuch a ſervice.*

He was much pleaſed in this conſideration, *That he was haſtening to a place where God nor none of his, would be aſhamed to own and receive him. Here is nothing in this world* (ſaith he) *but reproaching and deſpiſing God's precious Saints; but in Heaven there is a good reception for them, where are Manſions prepared from the beginning of the world.*

He ſaid, *You will ſhortly ſee God coming forth with Vengeance upon the whole Earth, Vengeance upon the outward-man of his Saints, and Vengeance upon the inward-man of his and their Enemies; and that ſhall perform greater execution, than was heretofore.*

After his Sentence, he ſaid to ſome Friends, God brought him up-

on three ſtages, (to wit, before the Court) and was now leading him to the fourth (his Execution-place) which was far eaſier and pleaſanter to him than any of the other three.

Saturday June 14. 1662, *being the day of his Execution, on Tower-Hill.*

He told a Friend, God bid *Moſes* go to the top of Mount *Piſgah*, and die ; ſo he bid him now, go to the top of *Tower-hill*, and die.

Some paſſages of his Prayer with his Lady, Children, and other Friends in his Chamber.

MOſt holy and gracious Father, look down from the habitation of thy Holineſs ; viſit, relieve and comfort us thy poor Servants, here gathered together in the Name of Chriſt. *Thou art rending this Vaile, and bringing us to a Mountain that abides firm. We are exceeding interrupters of our own joy, peace and good, by the workings and reaſonings of our own hearts. Thou haſt promiſed, that thou wilt be a Mouth to thy People in the hour of Tryal : for thou haſt required us, to forbear the preparatory agitations of our own minds, becauſe it is not we that are to ſpeak, but the Spirit of our heavenly Father that ſpeaketh in us, in ſuch ſeaſons. In what ſeaſons more, (Lord) than when thou calleſt for the Teſtimony of thy Servants to be writ in Characters of Blood ? Shew thy ſelf in a poor weak Worm, by enabling him to ſtand againſt all the power of thy Enemies. There hath been a battel fought with garments rouled in blood, in which (upon ſolemn Appeals on both ſides) thou didſt own thy Servants, though through the ſpirit of Hypocriſie and Apoſtacy, that hath ſprung up amongſt us, theſe Nations have been thought unworthy any longer to enjoy the fruits of that Deliverance. Thou haſt therefore another day of deciſion, to come, which ſhall be wrought by fire. Such a battel is to begin, and be carried on by the Faith of thy People, yea, is in ſome ſort, begun by the Faith of thy poor Servant, that is now going to ſeal thy Cauſe with his Blood. Oh that this deciſion of thine may remarkably ſhew it ſelf in thy Servant at this time, by his bold Teſtimony and ſealing it with his Blood. We know not what interruptions may attend thy Servant, but Lord, let thy Power carry him in a holy Triumph over all difficulties.*

Thou art the great Judge and Law-giver ; for the ſake of thy Servants therefore, O Lord, return on high, and cauſe a righteous Sentence to come forth from thy preſence, for the relief of thy deſpiſed People.

People. This, thy Servants with Faith and Patience wait for. The working of this Faith in us, cauſeth the Enemy to give ground already. If Death be not able to terrifie us from keeping a good Conſcience, and giving a good Teſtimony againſt them, what can they do but ſtumble and fall backwards? The day approaches in which thou wilt decide this Controverſie, not by Might nor by Power, but by the Spirit of the living God. This Spirit will make its own way, and run through the whole Earth. Then ſhall it be ſaid, Where is the fury of the Oppreſſor? *Who is he that dares or can ſtand before the Spirit of the Lord, in the mouth of his Witneſſes?* Ariſe, O Lord, and let thine Enemies be ſcattered. *Thy poor Servant knows not how he ſhall be carried forth by thee this day, but, bleſſed be thy great Name, that he hath whereof to ſpeak in this great Cauſe. When I ſhall be gathered to thee this day, then come thou in the Miniſtry of thy holy Angels that excel in ſtrength. We have ſeen enough of this World, and thou ſeeſt, we have enough of it. Let theſe my Friends, that are round about me, commit me to the Lord, and let them be gathered into the Family of* Abraham *the Father of the Faithful, and become faithful Witneſſes of thoſe Principles and Truths that have been diſcovered to them, that it may be known, that a poor weak Prophet hath been amongſt them, not by the words of his mouth onely, but by the voice of his Blood and Death, which will ſpeak when he is gone. Good Lord, put words into his mouth that may daunt his Enemies, ſo that they may be forced to ſay, God is in him of a Truth, and that the Son of God is in his heart, and in his mouth. My hour-glaſs is now turned up, the ſand runs out apace, and it is my happineſs that Death doth not ſurprize me. It is Grace and Love thou doſt ſhew thy poor Servant, that thou haſteneſt out his time, and letteſt him ſee it runs out with Joy and Peace. Little do my Enemies know (as eager as they are to have me gone) how ſoon their breaths may be drawn in.*

But let thy Servant ſee Death ſhrink under him. What a glorious ſight will this be in the preſence of many Witneſſes, to have Death ſhrink under him, which he acknowledgeth to be only by the power of the Reſurrection of Jeſus Chriſt, whom the bands of Death could not hold down? Let that Spirit enter into us that will ſet us again upon our feet, and let us be led into that way, that the Enemies may not know how to deal with us.

Oh! what abjuring of Light, what Treachery, what meanneſs of ſpirit has appeared in this day? What is the matter? Oh! Death is the matter. Lord, ſtrengthen the Faith and Heart of thy poor Ser-

vant, to undergo this dayes work with Joy and Gladneſs, and bear it on the Heart and Conſciences of his Friends that have known and ſeen him, that they alſo may ſay, the Lord is in him of a truth.

Oh that thy Servant could ſpeak any bleſſing to theſe three Nations. Let thy Remnant be gathered to thee. Proſper and relieve that poor handful that are in Priſons and Bonds, that they may be raiſed up and trample Death under foot. Let my poor Family that is left deſolate, let my dear Wife and Children be taken into thy Care, be thou a Husband, Father and Maſter to them. Let the Spirits of thoſe that love me, be drawn out towards them. Let a Bleſſing be upon theſe Friends that are here at this time, ſtrengthen them, let them find Love and Grace in thine Eyes, and be increaſed with the Increaſings of God. Shew thy ſelf a loving Father to us all, and do for us abundantly, above and beyond all that we can ask or think, for Jeſus Chriſt his ſake. Amen.

Several Friends being with him in his Chamber this morning, he oft encouraged them to chearfulneſs, as wel by his example as expreſſion. In all his deportment, he ſhewed himſelf marvellouſly fitted to meet the King of Terrors, without the leaſt affrightment. But to ſhew where his ſtrength lay, he ſaid, *he was a poor unworthy wretch, and had nothing but the Grace and Goodneſs of God to depend upon.* He ſaid, moreover, *Death ſhrunk from him, rather than he from it.* Upon the occaſion of parting with his Relations, he ſaid, *There is ſome fleſh remaining yet, but I muſt caſt it behind me, and preſs forward to my Father.*

Then one of the Sheriffs men came in and told him, There was no Sled to come, but he was to walk on foot.

He told his Friends, the Sheriffs Chaplain came to him at twelve of the clock that night, with an Order for his Execution, telling him, he was come to bring him that fatal Meſſage of Death. *I think (Friends) that in this Meſſage was no diſmalneſs at all; After the receipt of which, I ſlept four hours ſo ſoundly, that the Lord hath made it ſufficient for me, and now I am going to ſleep my laſt, after which I ſhall need ſleep no more.*

Then Mr. Sheriff coming into the Room, was friendly ſaluted by him, and after a little pauſe, communicated a Prohibition that he ſaid he had received, which was, That he muſt not ſpeak any thing againſt his Majeſty, or the Government. His Anſwer to this he himſelf relates on the Scaffold. He further told Mr. Sheriff, he was ready:

but

but the Sheriff ſaid, he was not, nor could be this half hour yet; *Then Sir, it reſts on you, not on me* (ſaid Sir *Henry*) *for I have been ready this half hour.* Then the Sheriff, at his requeſt, promiſed him his ſervants ſhould attend him on the Scaffold and be civilly dealt with, neither of which were performed, for (notwithſtanding this promiſe) they were beaten and kept off the Scaffold, till he ſaid, *What? have I never a ſervant here?*

After this, one of the Sheriffs men came and told him, there muſt be a Sled; to which Sir *Henry* replied, *Any way, how they pleaſe, for I long to be at home, to be diſſolved and to be with Chriſt, which is beſt of all.* He went very chearfully and readily down the ſtairs from his Chamber, and ſeated himſelf on the Sled, (Friends and Servants ſtanding about him) then he was forthwith drawn away towards the Scaffold. As he went, ſome in the *Tower* (Priſoners as well as others) ſpake to him, praying the Lord to go with him. And after he was out of the *Tower*, from the tops of houſes and out of windows, the people uſed ſuch means and geſtures as might beſt diſcover at a diſtance, their reſpects and love to him, crying aloud, *The Lord go with you, The great God of Heaven and Earth appear in you, and for you*; whereof he took what notice he was capable in thoſe circumſtances, in a chearful manner accepting their reſpect, putting off his Hat and bowing to them. Being asked ſeveral times, how he did, by ſome about him, he anſwered, *Never better in all my life.* Another replied, How ſhould he do ill that ſuffers for ſo glorious a Cauſe? To which a tall black man ſaid, Many ſuffered for a better Cauſe; *and may for a worſe*, ſaid Sir *Henry*, wiſhing, *That when they come to ſeal their* better Cauſe (*as he called it*) *with their Blood* (*as he was now going to ſeal his*) *they might not find themſelves deceived*; *And as to this Cauſe*, ſaid he, *it hath given Life in Death, to all the Owners of it, and Sufferers for it.*

Being paſſed within the Rails on *Tower-hill*, there were many loud acclamations of the people, crying out, *The Lord Jeſus go with your dear Soul, &c.* One told him, that was the moſt glorious Seat he ever ſate on; he anſwered, *It is ſo indeed*, and rejoyced exceedingly.

Being come to the Scaffold, he chearfully aſcends, and being up, after the crowd on the Scaffold was broken in two pieces, to make way for him, he ſhewed himſelf to the People on the front of the Scaffold, with that Noble and Chriſtian-like deportment, that he rather ſeemed a looker-on, than the perſon concerned in the Execution, Inſomuch that it was difficult to perſwade many of the People, that he

was

was the Priſoner. But when they knew that the Gentleman in the black Sute and Cloak (with a Scarlet ſilk Waſtcoat (the victorious colour) ſhewing it ſelf at the breaſt) was the Priſoner, they generally admired that Noble and great Preſence he appeared with. How chearful he is! ſaid ſome; he does not look like a dying man! ſaid others; with many like ſpeeches, as aſtoniſhed with that ſtrange appearance he ſhined forth in.

Then (ſilence being commanded by the Sheriff) lifting up his hands and eyes towards Heaven, and then reſting his hands on the Rails, and taking a very ſerious, compoſed and majeſtick view of the great multitude about him, he ſpake as followeth.

His SPEECH *on the* SCAFFOLD.

Gentlemen, fellow-Countrymen, and Chriſtians,

WHen Mr. Sheriff came to me this morning, and told me he had received a Command from the King, that I ſhould ſay nothing reflecting upon his Majeſty or the Government; I anſwered, I ſhould confine and order my Speech, as near as I could, ſo as to be leaſt offenſive, ſaving my faithfulneſs to the Truſt repoſed in me, which I muſt ever diſcharge with a good Conſcience unto Death; for I ever valued a man, according to his faithfulneſs to the Truſt repoſed in him, even on his Majeſties behalf, in the late Controverſie. And if you dare truſt my diſcretion, Mr. Sheriff, I ſhall do nothing but what becomes a good Chriſtian and an Engliſhman; and ſo I hope I ſhall be civilly dealt with.

When Mr. Sheriffs Chaplain came to me laſt night about twelve of the clock, to bring me, as he called it, the fatal Meſſage of Death, it pleaſed the Lord to bring that Scripture to my mind, in the third of *Zechary*, to intimate to me, that he was now taking away my filthy garments, cauſing mine iniquities to paſs from me, with intention to give me change of raiment, and that my mortal ſhould put on Immortality.

I ſuppoſe you may wonder when I ſhall tell you that I am not brought hither according to any known Law of the Land. It is true, I have been before a Court of Juſtice, (and am now going to appear before a greater Tribunal, where I am to give an account of all my actions) under their Sentence I ſtand here at this time. When I was before them, I could not have the liberty and priviledge of an Engliſhman, the grounds, reaſons, and cauſes of the Actings I was charged with

with, duly conſidered; I therefore deſired the Judges, that they would ſet their Seals to my Bill of Exceptions; I preſſed hard for it again and again, as the Right of my ſelf, and every free-born Engliſh-man, by the Law of the Land; but was finally denied it.——

Here Sir *John Robinſon* (Lieutenant of the Tower) interrupted him, ſaying, Sir, you muſt not go on thus, and (in a furious manner, generally obſerved, even to the diſ-ſatisfaction of ſome of their own attendants) ſaid, that he railed againſt the Judges, and that it was a lye, and I am here (ſayes he) to teſtifie that it is falſe.

Sir *Henry Vane* replied, God will judge between me and you in this matter. I ſpeak but matter of Fact, and cannot you bear that? 'Tis evident, the Judges have refuſed to ſign my Bill of Exceptions—— Then the Trumpets were ordered to ſound or murre in his face, with a contemptible noiſe, to hinder his being heard. At which Sir *Henry* (lifting up his hand, and then laying it on his breaſt) ſaid, What mean you Gentlemen? is this your uſage of me? did you uſe all the reſt ſo? I had even done (as to that) could you have been patient, but ſeeing you cannot bear it, I ſhall only ſay this, *That whereas the Judges have refuſed to ſeal that with their hands, that they have done; I am come to ſeal that with my Blood, that I have done.* Therefore leaving this matter, which I perceive will not be born, I judge it meet to give you ſome account of my Life.

I might tell you, I was born a Gentleman, had the education, temper and ſpirit of a Gentleman, as well as others, being (in my youthfull dayes) inclined to the vanities of this world, and to that which they call *Good-fellowſhip*, judging it to be the only means of accompliſhing a Gentleman. But about the fourteenth or fifteenth year of my age, (which is about thirty four or five years ſince) God was pleaſed to lay the foundation or ground-work of Repentance in me, for the bringing me home to himſelf, by his wonderful rich and free Grace, revealing his Son in me, that by the knowledge of the onely true God, and Jeſus Chriſt whom he hath ſent, I might (even whilſt here in the body) be made partaker of Eternal Life, in the firſt-fruits of it.

When my Conſcience was thus awakened, I found my former courſe to be diſloyalty to God, prophaneneſs, and a way of ſin and death, which I did with tears and bitterneſs bewail, as I had cauſe to do. Since that foundation of Repentance laid in me, through Grace I have been kept ſteadfaſt, deſiring to walk in all good Conſcience towards God and towards men, according to the beſt light and underſtanding

God

God gave me. For this, I was willing to turn by back upon my Eſtate, expoſe my ſelf to hazards in Forreign parts; yea, nothing ſeemed difficult to me, ſo I might preſerve Faith and a good Conſcience, which I prefer before all things; and do earneſtly perſwade all people rather to ſuffer the higheſt contradictions from men, than diſobey God, by contradicting the light of their own Conſcience. In this, it is, I ſtand with ſo much comfort and boldneſs before you all this day, and upon this occaſion; being aſſured, that I ſhall at laſt ſit down in Glory with Chriſt, at his right hand. I ſtand here this day, to reſign up my Spirit into the hands of that God that gave it me. Death is but a little word, but 'tis a great work to die, it is to be but once done, and after this cometh the Judgment, even the Judgment of the great God, which it concerns us all to prepare for. And by this Act, I do receive a diſcharge, once for all, out of Priſon, even the Priſon of the mortal body alſo, which to a true Chriſtian is a burdenſom weight.

In all reſpects, wherein I have been concerned and engaged as to the Publick, my deſign hath been to accompliſh Good things for theſe Nations. Then (lifting up his eyes, and ſpreading his hands) he ſaid, *I do here appeal to the great God of Heaven, and all this Aſſembly, or any other perſons, to ſhew wherein I have defiled my hands with any mans Blood or Eſtate, or that I have ſought my ſelf in any publick capacity or place I have been in.*

The Cauſe was three times ſtated.

1. In the *Remonſtrance of the Houſe of Commons.*

2. In the *Covenant, the Solemn League and Covenant*—— Upon this the Trumpets ſounded, the Sheriff catched at the Paper in his hand, and Sir *John Robinſon*, who at firſt had acknowledged that he had nothing to do there, wiſhing the Sheriff to ſee to it, yet found himſelf ſomething to do now, furiouſly calling for the Writers-Books, and ſaying, *he treats of Rebellion, and you write it.* Hereupon ſix Note-Books were delivered up. The Priſoner was very patient and compoſed under all theſe injuries and ſoundings of the Trumpets ſeveral times in his face, only ſaying, *'Twas hard he might not be ſuffered to ſpeak*; but ſayes he, *my uſage from man is no harder than was my Lord and Maſters*; *And all that will live his life this day, muſt expect hard dealing from the worldly ſpirit*—— The Trumpets ſounded again, to hinder his being heard. Then again *Robinſon* and two or three others, endeavoured to ſnatch the Paper out of Sir *Henry's* hand, but he kept it for a while, now and then reading part of it; after-

afterwards, tearing it in pieces, he delivered it to a Friend behind him, who was preſently forced to deliver it to the Sheriff. Then they put their hands into his pockets for Papers (as was pretended) which bred great confuſion and diſſatisfaction to the Spectators, ſeeing a Priſoner ſo ſtrangely handled in his dying words. This was exceeding remarkable, in the midſt of all this diſorder, the Priſoner himſelf was obſerved to be of the moſt conſtant, compoſed ſpirit and countenance, which he throughout ſo excellently manifeſted, that a Royaliſt ſwore, *he dyed like a Prince.*

The Priſoner, ſuſpecting beforehand the diſorder afore-mentioned, writ the main Subſtance of what he intended to ſpeak on the Scaffold, in that Paper they catched at, and which he tore in pieces, delivering it to a Friend, from whom the Sheriff had it as above-ſaid; the true Copy whereof, was by the Priſoner carefully committed to a ſafe hand before he came to the Scaffold, which take as followeth.

THe Work which I am at this time called unto, in this place, (as upon a Publick Theater) is, to Die, and receive a Diſcharge, once for all, out of Priſon; to do that, which is but once to be done; the doing or not doing of which *well*, and as becomes a *Chriſtian*, does much depend upon the life we have been taught of God to lead, before we come to this: They that live in the Faith, do alſo die in it: Faith is ſo far from leaving Chriſtians in this hour, that the work of it breaks forth then into its greateſt power; as if till then, it were not enough at freedom to do its office, that is, to look into the things that are unſeen, with moſt ſteadfaſtneſs, certainty, and delight; which is the great Sweetner of Death, and Remover of its Sting.

Give me leave therefore in a very few words, to give you an account of my Life, and of the wonderful great Grace and Mercy of God, in bringing me home to himſelf, and revealing his Son in me; that by the knowledge of the only true God, and Jeſus Chriſt whom he hath ſent, I might (even whilſt here in the body) be made partaker of Eternal Life, in the firſt fruits of it; and at laſt ſit down with Chriſt in Glory, at his right-hand.

Here I ſhall mention ſome remarkable paſſages and changes of my Life; In particular, how unſought for by my ſelf, I was called to be a Member of the *Long Parliament*; what little advantage I had by it; and by what ſteps I became ſatisfied with the Cauſe I was engaged in, and did purſue the ſame.

What the Cauſe was, did firſt ſhew it ſelf, in the *firſt Remonſtrance of the Houſe of Commons.*

Secondly, in the *Solemn Leagne and Covenant.*

Thirdly, in the *more refined purſuit of it by the Commons Houſe, in their Actings ſingle*: with what Reſult they were growing up into, which was in the breaſt of the Houſe, and unknown; or what the *three Propoſals*, mentioned in my Charge, would have come to at laſt, I ſhall not need now to ſay; but only, from all put together, to aſſert, *That this Cauſe which was owned by the Parliament, was the* CAUSE *of* GOD, *and for the Promoting of the Kingdom of his dear Son,* JESUS CHRIST; *wherein are comprehended our Liberties and Duties, both as Men and as Chriſtians.*

And ſince it hath pleaſed God, who ſeparated me from the womb to the knowledge and ſervice of the Goſpel of his Son, to ſeparate me alſo to this hard and difficult ſervice at this time, and to ſingle me out to the defence and juſtification of this his Cauſe, I could not conſent by any words or actions of mine, that the innocent Blood that hath been ſhed in the defence of it, throughout the whole War, (*the Guilt and moral evil of which, muſt and does certainly lye ſomewhere*) did lye at my door, or at theirs that have been the faithful Adherers to this Cauſe. This is with ſuch evidence upon my heart, that I am moſt freely and chearfully willing, to put the greateſt Seal to it I am capable, which is, the pouring out of my very Blood in witneſs to it; which is all I ſhall need to ſay in this place, and at this time, having ſpoken at large to it in my Defence at my Tryal, intending to have ſaid more the laſt day, as what I thought was reaſonable for *Arreſt of the Judgment*, but I was not permitted then to ſpeak it; Both which may with time and God's providence, come to publick view.

And I muſt ſtill aſſert, That I remain wholly unſatisfied, that the courſe of proceedings againſt me at my Tryal were according to Law, but that I was run upon and deſtroyed, contrary to Right, and the Liberties of *Magna Charta*, under the form only of Juſtice: which I leave to God to decide, who is the Judge of the whole World, and to clear my Innocency; Whilſt in the mean time, I beſeech him to forgive them, and all that have had a hand in my Death; and that the Lord in his great mercy will not lay it unto their charge.

And I do account this Lot of mine no other, than what is to be expected by thoſe that are not of the World, but whom Chriſt hath choſen out of it; for the Servant is not greater than his Lord; And if they have done this to the green tree, they will do it much more to the dry.

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However, I ſhall not altogether excuſe my ſelf. I know, that by many weakneſſes and failers, I have given occaſion enough of the ill uſage I have met with from men, though, in the main, the Lord knows the ſincerity and integrity of my heart, whatever Aſperſions and Reproaches I have or do lye under. I know alſo that God is juſt, in bringing this Sentence and Condemnation upon me, for my ſins; there is a body of ſin and death in me, deſerves this Sentence; and there is a ſimilitude and likeneſs alſo, that, as a Chriſtian, God thinks me worthy to bear with my Lord and head, in many circumſtances in reference to theſe dealings I have met with, in the good I have been endeavouring for many years to be doing in theſe Nations, and eſpecially now at laſt, in being numbred amongſt tranſgreſſors and made a publick Sacrifice, through the wrath and contradictions of men, and in having finiſhed my courſe, and fought the good fight of Faith, and reſiſted in a way of ſuffering (as you ſee) even unto blood.

This is but the needful preparation the Lord hath been working in me, to the receiving of the Crown of Immortality, which he hath prepared for them that love him, The proſpect whereof is ſo chearing, that through the Joy (in it) that is ſet before the eyes of my Faith, I can, through mercy, *endure this Croſs*, *deſpiſe this Shame*, and am become *more than Conquerour*, through Chriſt that hath loved me.

For my Life, Eſtate and all, is not ſo dear to me as my Service to God, to his Cauſe, to the Kingdom of Chriſt, and the future welfare of my Country; and I am taught according to the Example, as well as that moſt Chriſtian ſaying of a Noble Perſon that lately died after this publick manner in *Scotland*; "How much better is it to chuſe Affliction and the "Croſs, than to ſin or draw back from the Service of the Living God, "into the wayes of Apoſtacy and Perdition.

That Noble Perſon, whoſe Memory I honour, was with my ſelf at the beginning and making of the *Solemn League and Covenant*, the Matter of which, and the holy Ends therein contained, I fully aſſent unto, and have been as deſirous to obſerve; but the *rigid* way of proſecuting it, and the *oppreſſing Uniformity* that hath bin endeavored by it, I never approved.

This were ſufficient to vindicate me from the falſe Aſperſions and Calumnies which have been laid upon me, of *Jeſuitiſm* and *Popery*, and almoſt what not, to make my Name of ill ſavour with *good men*; which dark miſts do now diſpel of themſelves, or at leaſt ought, and need no pains of mine in making an Apology.

For if any man ſeek a proof of Chriſt in me, let him reade it in this action of my Death, which will not ceaſe to ſpeak when I am gone; *And henceforth let no man trouble me, for I bear in my body the marks of the Lord Jeſus.*

I ſhall not deſire in this place to take up much time, but only, as my laſt words, leave this with you: "That as the preſent ſtorm we now lie "under, and the dark Clouds that yet hang over the Reformed Churches "of Chriſt, (which are coming thicker and thicker for a ſeaſon) were "not un-fore-ſeen by me for many years paſſed, (as ſome Writings of "mine declare:) So the coming of Chriſt in theſe Clouds, in order to "a ſpeedy and ſudden Revival of his Cauſe, and ſpreading his Kingdom "over the face of the whole Earth, is moſt clear to the eye of my Faith, "even that Faith in which I dye, whereby the Kingdoms of this world "ſhall become the Kingdom of our Lord, and of his Chriſt. *Amen.* "Even ſo, come, Lord Jeſus.

Some Paſſages of his PRAYER on the Scaffold.

THe Heaven is thy Throne, O Lord, and the Earth is thy footſtool, but to this man wilt thou look, even to him that is poor, and of a contrite ſpirit, and trembleth at thy Word. *Thou, O Lord, art the great God of Heaven and Earth, thou filleſt all places with thy preſence, art the Judge of the whole World, and doſt Righteouſneſs. We are poor unworthy ſinful creatures, by nature children of wrath as well as others: We are wiſe to do evil, but to do good we have no knowledge. If to will be preſent with us, yet how to perform and go through with that which is good, and not be weary of well-doing, we find not.*

Bring us, O Lord, into the true myſtical Sabbath-ſtate, that we may ceaſe from our own works, reſt from our labors, not think our own thoughts, find our own deſire, or walk in the way of our own hearts, but become a meet habitation of thy Spirit by the everlaſting Covenant, the place of thy Reſt. Let the Spirit of God and of Glory, that is greater than he that is in the world, reſt upon us, work in and by us mightily, to the pulling down of fleſh and blood, the ſtrong holds of Sin and Satan in our ſelves and others, cauſing us ſo to ſuffer under the Fire-Baptiſm thereof, as that we may ceaſe from ſin for ever, or from that fleſhly, mutable, & temporary ſtate of life and righteouſneſs, which at beſt is liable to roul back into ſin again, to be intangled, overcome, and finally trimmphed over by the pollutions of this world. Deliver us, O Lord, from the Evil One, deliver us from our ſelves, take us out of our own diſpoſe, our own liberty and power, the freedom, the mutable holineſs and righteouſneſs of the ſons of men, at its beſt, and bring us into the moſt glorious Liberty, the moſt holy immutable and righteous ſtate of the ſons of God, a freedom to Good only, and not at all to

evil, attended and accompanied with a power in us, through thy Spirit, of doing all things for the Truth, and a disability brought upon us as to the doing of any thing against the Truth, in the single power and freedom of our own spirit. Then the prince of this world coming to us, will find nothing in us; at least, no prevailing activity of self, nature or flesh, which at best, is capable to be made by him an engin of opposition to the Kingdom of Christ, and our own true blessedness. Thou hast laid on thy Son the iniquities of us all; by his stripes we are healed. *We must all stand before the Judgment-Seat of Christ, to give an account of what we have done in the body whether it be good or whether it be evil. He will bring every secret counsel to light; things that are wrought in darkness, he maketh plain and evident. Thine eyes, O Lord, run to and fro through the whole earth.* Thine eyes do behold, thine eye-lids try the children of men. The wicked and him that loveth violence, thy soul hateth. But thou upholdest the poor and needy, him that is of a broken heart and of a contrite spirit. The humble and lowly thou wilt teach, the meek thou wilt guide in Judgment; thou wilt beautifie the meek with Salvation. *Thou art the supream disposer of all the Kingdoms of men, giving them to whomsoever thou wilt. Whatever crost-blows thou sufferest to be given thy People for a season, thou ordereſt all, to thy own glory, and their true advantage. But thou hast a set time for Sions deliverance, in which the greatness of the Kingdom under the whole Heaven, shall be given unto the best and choicest of men, the people of the Saints of the most high, whose Kingdom is an everlasting Kingdom. Let the exceeding near approach of this, bear up the spirits of thy poor despised ones, in this day of extremity and suffering, from sinking and despondency. Carry them through their suffering part, with a holy triumph, in thy Chariots of Salvation. How long, O Lord, holy and true? make haste to help the Remnant of thy People. Break the Heavens and come down, touch the Mountains of prey, the Kingdoms of this evil world, and let them smoak. Let the mouth of all Iniquity be stopped. Silence every one that stands up against thee. Rebuke the debauched prophane spirits of men, that set themselves to work wickedness, running with greediness into all filthiness and superfluity of naughtiness.* They eat thy People as they eat bread. They are profound to make slaughter, skilful to destroy, though thou hast been the rebuker of them all. *But, Lord, be this dispensation of what continuance it will, for the serving of thy most gracious and wise designs, let the spirit and resolution of thy Servants be steady and unchangeable, that whether they live, they may live to the Lord, that died for them; or whether they die, they may die to the Lord, who lives for ever to make intercession for them, that they may glorifie thee with their bodies and spirits, whether by life or by death.*

Thou

Thou knoweſt O Lord, that in the Faith of Jeſus, and for the Truth as it is in Jeſus, thy Servant deſires to die, walking in the ſteps of our father Abraham, *and for Righteouſneſs and Judgment, following the Lord in all his wayes whitherſoever he goes, worſhipping the God of his believing fathers,* Abraham, Iſaac *and* Jacob, *in that way which men call Hereſie. In this Faith, dear Lord, I have lived, and in this Faith and Profeſſion I die, as one that hath herein ſtood up for the Teſtimony of* JESUS *againſt all Idolatry, Superſtition, Prophaneſs and Popery, or whatever is unſound or unfit to be brought before the Throne of ſo great and glorious a Majeſty. 'Tis in this Faith that thy Servant dies. Now ſet thy Seal to it, and remove the reproaches and calumnies with which thy Servant is reproached, for thou knowſt his innocency. Dear Father, thou ſenteſt us into this world, but this world is not our home, we are ſtrangers and pilgrims in it, as all our fathers were. We have no abode here, but there is a houſe, not made with hands, eternal in the heavens, that when this tabernacle is diſſolved, we may enter into. In our Fathers houſe are many manſions; Oh! whatever the curſes and condemnations of the Law are, be thou near to us, and ſpread the Righteouſneſs of Chriſt over us, and we ſhall be ſafe.* Bleſſed is he, whoſe tranſgreſſions are forgiven, and whoſe ſins are covered. *Who will ſpeak, who will take on him to ſay any thing, or to plead with Thee, upon any other terms but in the Name and Merits of the mighty Redeemer, on whom our help is laid. We deſire to lie low, to be abaſed and take ſhame & confuſion of face to our ſelves, as that which properly belongs to us, that Thou alone maiſt be exalted and advanced. 'Tis of meer Grace, O Lord, that thy Servant hath now ſome ſign of thy ſpecial Salvation, even thy free-Grace, O God, whereby thou doſt accept him in thy Son. Lay him low and humble & abaſe his ſoul for his ſins, and all his unworthineſſes before thee. Men cannot ſpeak evil enough of our ſins. In this perſwaſion, this abaſement and humiliation, thy Servant deſires to die. And, dear Lord, thou ſeeſt & knowſt all things, and art able to witneſs to the truth & integrity of thy Servant. When his blood is ſhed upon the Block, let it have a voice afterward, that may ſpeak his Innocency, and ſtrengthen the Faith of thy Servants in the Truth. Let it alſo ſerve for conviction to the worſt of thy Enemies, that they may ſay, Surely the Lord knows, and the Lord owns his Servant, as one that belongs to him. The deſire of our ſoul is to haſten to thee, O God, to be diſſolved, that we may be with Chriſt. Bleſſed be thy Name, that this great ſtrait that we were before in, is now determined; that there is no longer abode for me in this mortal body. Our great Captain, the great General of our ſouls, did go in a way of affliction before us, to Heaven. Come, Lord, declare thy Will, that thy poor Servant may ma-*

niſeſt

niſeſt a readineſs to come to Thee; Prepare his heart, that in his acceſs to Thee may, he be brought down at thy feet, in ſhame & confuſion for all the evil is ſo of hul; but Thou art his ſalvation. Let thy Servant ſpeak ſomething on the behalf of the Nation wherein he hath lived; Lord, did we not exceed other Nations in our day? Great things have been done by thee in the midſt of us. Oh, that thou wouldſt look down in pity & compaſſion, and pardon the ſins of this whole Nation, and lay them not to their charge; ſhew them what is thy good and acceptable Will, and bring them into ſubjection thereunto. We humbly pray thee, O Lord, look down with compaſſion upon this great & populous City, cleanſe away the impurity, ſinfulneſs and defilements thereof; cauſe their ſouls to delight in thy Word, that they may live. Let a ſpirit of Reformation and Purity ſpring up in and amongſt them with power; make them willing to lay down all that is dear to them for thee, that Thou mayſt give them a Crown of Life; that they may always deſire & chuſe affliction, and to be expoſed to the worſt condition & hardeſt circumſtances, that can be brought upon them in this world, rather than ſin againſt him that hath loved them and bought them with a price, that they might live to him in their bodies and in their ſpirits.

We are aſſured Thou knoweſt our ſuffering caſe and condition, how it is with us. We deſire to give no juſt occaſion of offence, nor to provoke any, but in meekneſs to forgive our Enemies. Thy Servant that is now falling aſleep, doth heartily deſire of thee, that thou wouldeſt forgive them, and not lay this ſin to their charge.

Before the ſtroke, he ſpake to this effect; *I bleſs the Lord who hath accounted me worthy to ſuffer for his Name. Bleſſed be the Lord that I have kept a conſcience void of offence to this day. I bleſs the Lord I have not diſſerted the Righteous Cauſe, for which I ſuffer.*

But his very laſt words of all at the Block, were as followeth; *Father, glorifie thy Servant in the ſight of men, that he may glorifie thee in the diſcharge of his Duty to Thee and to his Country.*

It was obſerved, that no ſigns of inward fear appeared by any trembling or ſhaking of his hands, or any other parts of his body, all along on the Scaffold. Yea, an ancient Traveller and curious obſerver of the demeanor of perſons in ſuch publick Executions, did narrowly eye his Countenance to the laſt breath, and his Head immediately after the ſeparation; he obſerved that his Countenance did not in the leaſt change: and whereas the Heads of all he had before ſeen, did ſome way or other move after ſevering, which argued ſome reluctancy and unwillingneſs to that parting-blow; the Head of this Sufferer lay perfectly ſtill, immediately upon

upon the ſeparation: on which he ſaid to this purpoſe, That his Death was by the free conſent and act of his mind; which Animadverſion notably accords with what the Sufferer himſelf had before expreſſed, in differencing a death by rational choice, from that by ſickneſs, which is with conſtraint upon the body. He deſired to be diſſolved & to be with Chriſt.

The Names of the Grand Jury, in the Caſe of Sir Henry Vane.

SIr *John Cropley* of *Clarkenwel*, *London*, Knight and Baronet. *Thomas Taylor* of St. *Martins* in the Fields, *London*, Eſq; *Francis Swift* of St. *Gyles* in the Fields, Eſq. *Jonas Morley* of *Hammerſmith*, Gent. *George Cooper* of *Covent Garden*, Gent. *Thomas Conſtable* of *Covent Garden*, Gent. *Edward Burrows* of *Eaſt-Smithfield*, Gent. *Michael Dibbs* of the ſame, Gent. *Edward Gregory* of St. *Gyles* in the Fields, Gent. *Richard Freeman* of *Iſlington*, Gent. *Thomas Pitcock* of the ſame, Gent. *Richard Towers* of *Clarkenwel*, Gent. *Robert Vauce* of *Paddington*, Gent. *Thomas Benning* of *Wilſdon*, Gent. *Francis Child* of *Acton*, Gent. *Iſaac Cotton* of *Bow*, Gent. *Peter Towers* of *Mile-end*, Gent. *Thomas Uffman* of *Hammerſmith*, Gent. *Matthew Child* of *Kenſington*, Gent. *Bryan Bonnaby* of *Weſtminſter*, Gent. *George Ronſe* of St. *Gyles* in the Fields, Gent. Twenty one in all.

The Names of the Petty Jury.

Sir *William Roberts*. Sir *Chriſtopher Abdy*. *John Leech*. *Daniel Cole*. *John Stone*. *Daniel Brown*. *Henry Carter*. *Thomas Chelſam*. *Thomas Pitts*. *Thomas Upman*. *Andrew Brent*. *William Smith*.

Judges of the King's Bench.

Chief Juſtice *Foſter*. Juſtice *Mallet*. Juſtice *Twiſden*. Juſtice *Windham*.

The Kings Counſel againſt the Priſoner; (no Counſel being permitted to ſpeak one word in his behalf, to the matter or form of the Indictment, or any thing elſe.)

Sir *Geoffry Palmer*, the King's Attorney General. Sir *Henneage Fynch*, the King's Sollicitor General. Sir *John Glyn*. Sir *John Maynard*. Sir *William Wild*. Serjeant *Keeling*.

Witneſſes againſt Sir Henry Vane.

Marſh, a Papiſt, 'tis ſaid; who witneſſed what was accounted moſt dangerous againſt the Priſoner, as to change of Government.
William Dobbins. *Matthew Lock*. *Thomas Pury*. *Thomas Wallis*. *John Coot*.

The

HE in whom is the Right of Soveraign, and to give Law, is either so of himself, or in the Right of another, that may derive the same unto him; which shews that there are two sorts of Soveraigns.

A Soveraign in the first sense, none is nor can be, but God, who is of himself most absolute. And he that is first of all others in the second sence, is the Man Christ Jesus, to whom the Power of Soveraign, in the Right of the Father is committed, over all the Works of Gods hands. Christ exercised the same in the capacity of *David's* Root from before the beginning of the World. He owned himself thus to be, long before he became *David's* Seed; This his being in Spirit, or hidden being, even as a Creature, the first of all Creatures in personal Union with the Word, *David* saw and acknowledged, *Psal.* 110. 1. Thus Christ may be called God's Lieutenant Soveraign, or Generall Vicegerent of his Supremacy over all in Heaven and in Earth. He therefore is the true Universal King and Root of all Soveraign and just Governing Power, whether in Heaven or on Earth.

His Soveraignty is unquestionable and unaccountable, because of the Perfection of his Person, carrying in it an aptitude and sufficiency to Govern, without possibility of Error or Defect of any kind. Soveraign and Governing Power doth necessarily relate to Subjects, that are to be the Ruled, and Subjects capable of such Government. Therefore when God himself purposes within himself, to be Supream Legislator and Governour, he doth withal purpose the Being and Creation of both Worlds, as the Subject matter of his Kingdom. He propounds to Govern his Subjects by and with their own consent and good liking; or, without and against it, in the way of his revenging Justice; Governing by Laws, clearly stating and ascertaining the Duty or the Offence, as also the Rewards and Penalties.

Herein Just Government consists, or the Justice of Government; for he that Rules over others, must be Just; and indeed should be seen to be so in all his Commands: so seen, as to render the Consciences of the Ruled, and those whose duty it is to Obey, inexcusable before God and before Men, if they Dissent or Resist.

Inexcuſable they are before God, becauſe the matter Commanded is the matter of God's Law, & therefore juſt to be obeyed. They are alſo Inexcuſable before Men, that which is required of them being generally acknowledged and affirmed (by thoſe in whom the common conſent of the Subjects is intruſted to that end) to be Juſt, and Reaſonable, and therefore to be Obeyed. For the end of all Government, being for the Good and Welfare, and not for the Deſtruction of the Ruled; God who is the Inſtitutor of Government, as he is pleaſed to Ordain the Office of Governors, intruſting them with Power to command the Juſt and Reaſonable Things, which his own Law Commands, that carry their own evidence to common Reaſon and Senſe, at leaſt, that do not evidently contradict it, ſo he grants a Liberty to the Subjects, or thoſe that by him are put under the Rule, to refuſe all ſuch Commands as are contrary to his Law, or to the judgement of common Reaſon and Senſe, whoſe trial he allows, by way of aſſent or diſſent, before the Commands of the Ruler ſhall be Binding or put in Execution; and this in a Co-ordinacy of Power with Juſt Government, and as the due Ballance thereof. The Original Impreſſions of Juſt Laws are in Mans Nature and very Conſtitution of Being. Man hath the Law in his Mind, (or the Superior and Intellectual part of him) convincing and bringing that into obedience and ſubjection to the Law of God, in Chriſt himſelf. He hath alſo that which is a Law in his Members that are on the Earth, (or his earthly and ſenſual part) whoſe Power is Co-ordinate with the other, but ſuch, that if it be not gained into a Harmony and Conjunction with its Head, the Spirit or Mind of man, hath ability to let and hinder his Mind or Ruling part, from performing and putting in execution, that which is good, juſt, fit, and to be acknowledged as the righteous dictates of the Mind, which ought to be the Ruling Power, or Law to the Man. So in the outward Government over Man, the ſecondary or co-ordinate Power, concurring with that which is the chief ruling Power, is eſſential to Juſt Government; and is acknowledged to be ſo, by the Fundamental Conſtitution of the Government of *England*, as well as in the Legal Being and Conſtitution of Parliaments, whether that which hath been uſual and ordinary, according to the Common Law; or that which of late hath been Extraordinary, by expreſs Statute, for the continuance of the Parliament, 17. *Car.* until diſſolved by Act of Parliament.

For together with the Legal Being which is given to Regal Power,

Power and the Prerogative of the Crown, there is the Legal Power and Being reſerved alſo unto that Body, which is the Peoples or Kingdoms Repreſentative, who are the Hands wherein that which is called Power Politick is ſeated, and are intruſted with giving or with holding the common Conſent of the whole Nation, according to the beſt of their Underſtandings, in all matters coming before them, and are to keep this Liberty Inviolate and Entire, againſt all Invaſions or Encroachments upon it, whatſoever.

This ſecond Power in the very Writ of Summons for calling a Parliament, is declared to be of that Nature, that what the firſt doth without obtaining the Conſent and Approbation of the ſecond, in Parliament, is not binding but ineffectual. And when the Repreſentative Body of the Kingdom, (in and with whom, this Power is intruſted, as the Due and Legal Ballance and Boundary to the Regal Power, ſet and fixed by the Fundamental Conſtitution) is made a ſtanding Court, and of that Continuance, as not to be diſſolvable but by its own conſent; during ſuch its continuance, it hath right to preſerve it ſelf from all violent and undue Diſſolution, and to maintain and defend its own Juſt Priviledges, a chief of which is, to binde or looſe the People, in all matters good or hurtful to them, according to their beſt Judgement and diſcretion.

In the exerciſe of this their Truſt, they are Indempnified by Law, and no hurt ought to come unto them; that Governing Power, which is originally in God, and flowes at firſt from him, as the ſole and proper Fountain thereof, is brought into exerciſe amongſt men, upon a differing and diſtinct account.

Firſt, As it is a Truſt and Right derived conditionally from God to his Officers and Miniſters, (which therefore may be loſt) who being called by him, and in the courſe of his Providence, to the exerciſe of it, are to hold it of him the Univerſal King, and to own themſelves in the exerciſe thereof, as his Vicegerents, to cut off by the Sword of Juſtice evil-doers; and to be a Protection and encouragement to them that do well. But becauſe it is part of God's Call of any perſon to this high Truſt, to bring him into the poſſeſſion and free Exerciſe thereof, by the common conſent of the Body of the People, where ſuch Soveraign Power is ſet up, unleſs they have forfeited this Liberty. Therefore,

Secondly, God doth allow and confer by the very Law of Nature, upon the Community or Body of the People (that are re-

lated to, and concerned in the right of Government, placed over them) the Liberty by their common Vote or Suffrage duely given, to be Assenters or Dissenters thereunto, and to Affirm and make Stable, or Disallow and render Ineffectual, what shall apparently be found by them to be for the good or hurt of that Society, whose welfare next under the justice of God's Commands and his Glory, is the Supream Law, and very end of all Subordinate governing Power.

Soveraign Power then comes from God, as its proper Root, but the restraint or enlargement of it, in its Execution over such or such a Body, is founded in the common consent of that Body.

The Office of chief Ruler, or Head over any State, Commonwealth, or Kingdom, hath the Right of due Obedience from the People inseparably annexed to it. It is an Office, not onely of Divine Institution, but for the Safety and Protection of the whole Body or Community, and therefore justly and necessarily draws to it, and engages their Subjection.

This Office of the Soveraign, according to the Laws, and Fundamental Constitutions of the Government of *England*, is ministred by the King in a twofold Capacity, as his Will and personal Command is in Conjunction and Agreement with his People in Parliament, (during the Session thereof) or as it is in Conjunction and Agreement with the Law, the Parliament not Sitting. But his Will and Personal Command single, in dis-junction and disagree-from the Parliament or the Laws, hath not the force of a Law, saith *Fortescue*, and gives the Reason of it, *Because this is a limited Monarchy, where the King's Power (as to the exercise of it) is onely a Power Politick.*

The Obedience then which from the Subject is due to the King, and which they are sworn to perform by the Oath of Allegiance, is to him, in the ministry of the Royal Office, according to the reason and intent of the Fundamental Compact and Constitution, and according to his own Oath, which is to Govern by Law; that is, to Exercise his Rule or Royal commanding Power, in Conjunction and Agreement with the Parliament when sitting, and in Conjunction, and Agreement with the Laws of the Land, they not sitting. To exercise his Power otherwise, is and hath been alwayes judged a grievance to the People, and a going against that which is the original Right and just Liberty of the Community, who are not to be bound to such personal Commands

mands at will and pleasure, nor compelled to yield Obedience thereunto.

The contrary hereunto was the Principle at bottom of the Kings Cause, which he endeavoured to uphold and maintain, in order to decline and lay aside the Legal Restraints as aforesaid, which the Government of *England* by the Fundamental Constitution, is subjected unto, as to the exercise and ministery of the Royal Office.

From the Observation and Experience which the Pople of *England* had, and made many years together, by their Representatives in Parliament, of a desire in the King to shake off these Legal Restraints in the Exercise of the Regal Power, and on their having tried the best wayes and means that occurred to their Understandings, to prevent the same, and to secure to themselves the enjoyment of their Just Rights and Liberty, they at last pitch'd upon the desiring from the King, the continuance of the sitting of the Parliament called, *November* 3d 1640, in such sort as is expressed in that Act, 17. *Car.* wherein it is provided, *That it shall not be Discontinued or Dissolved, but by Act of Parliament.*

This was judged by them, the greatest Security imaginable, for keeping the ministry of the Royal Office within its due Bounds; and for quieting the People in the enjoyment of their Rights. But experience hath shewed, that this yet could not be done without a War, the worst and last of Remedies. For although their Continuance as the Representative Body of the Kingdom, with the Right to exercise the Power and Priviledges inherent in, and inseparable from that Supream Court and Chief Senate (whereof the King is Head, both making but one Person or Politick Body in Law) yet they themselves, as well as the King, were bound by the Fundamental Constitution or Compact, upon which the Government was at first built; containing the Condition upon which the King accepted of the Royal Office, and on which the People granted to him the Tribute of their Obedience and due Allegiance. This Condition, (as the Lawes and Experience declare) is, that the King shall exercise his Office of Rule over them according to the Laws, as hath been shewed, and as he and his People shall from time to time agree in Common Council in Parliament, for that end assembled. In respect hereof, the Laws so made, are called the Concords or Agreements passed between the King and the Subject, in the 3d part of *Cooks Institutes.*

These

These Agreements then are the Standard unto the Kings Rule and the Peoples Obedience, signifying the justice of his Commands, and the dueness of their Allegiance.

But the case so happening, that this Conjunction and Agreement which ought to be found between the personal Will of the King, and Representative Will of the Kingdom, failing, and these two Wills declaring themselves in Contrariety and Opposition, both of them becoming standing Powers, Co-ordinate and distinct parts of the Supremacy, as the two Channels wherein the Supremacy is placed and appointed to run, as to its exercise, by the Fundamental Constitution; hence sprang the War, each asserting and endeavouring to defend and maintain their own part and right, which ought not to be kept up in dis-junction and contrariety, but in Unity and Agreement each with other. These two Parties with their Adherents, in this Case, may be according to the Law, Contrarients one towards another, as the Law affords an Example, in the Preamble to *Cook's* 4th Part of his Institutes (not properly Traytors) being co-ordinate Powers, parts of the Supremacy, that are the Heads to each Party; and by consequence have a right of making a War, as their last Appeal, if they cannot otherwise agree.

Being once entred thus into a state of War and actual Enmity, they do as it were become two Nations, and cease to be under the Obligations they were in before, for during this state of War and Enmity, the standing Laws (in a sort) cease, and a new way of Rule each Party Forms to himself and his Adherents, as may best consist for each of their Safeties and Preservations.

Upon this Dis-junction of the two Wills, in the Harmony and Agreement whereof, the Supremacy is placed, these following Queries do naturally arise;

First.

To which, or Whether of these by Law is the Allegiance required as due? Is it to be yeilded to the Personal Will of the King single, in dis-junction from the Will of the Representative Body of the Kingdom, or to the Will of the People, in dis-junction from the Will of the King? Or is it to the Personal Will of the King, in conjunction with the Laws, though in opposition and contrariety to the Will of the Kingdoms Representative in Parliament Assembled? Or is it to the Will of the Kingdomes Representative, in conjunction with the Laws, though in opposition to the Personal Will of the King?

The

The Second Querie is,

In whose Judgement in this case are the People by Law to acquiesce, as to the declaring with whom the Laws are? Whether the Personal Judgement of the King single, or the Vote of the Senate, that is, the Kingdoms Representative Body?

The Third Querie is,

With whom will the Laws be found to go in this Case, so rare, unusual, and never happening before, and who is the Proper and Competent Judge? Also, whether the Laws be not perfectly silent, as never supposing such a Case possible to happen, by reason that the Power used by the one for Dissolving the other, never before suffered the Opposition to rise so high?

The Fourth Querie is,

Whether he, in this Case, that keept his Station and place of Trust, wherein God and the Law did set him, with care to demean himself according to the best of his Understanding, agreeably to the Law and Customes of Parliament, and pursuant to their Votes and Directions, (so long as they sit and affirm themselves to be a Parliament) and uses his best endeavours in the exercise of that publick Trust, that no Detriment in the general come unto the Common-wealth by the failer of Justice, and the necessary Protection due from Government, without any designing or intending the Subversion of the Constitution, but onely the securing more fully the Peoples Liberties and just Rights, from all future Invasions and Oppressions, be not so far from deserving to be judged Criminal in respect of any Law of God or Man, that he ought rather to be affirmed One that hath done his Duty, even the next best that was left to him, or possible for him to do, in such a dark stormy season, and such difficult Circumstances?

As to the Right of the Cause it self, it ariseth out of the matter of Fact that hath happened, and by the Just and Wise Providence of God, hath been suffered to state it self, in the Contest between the Personal Will and declared Pleasure of the King, on the one Hand, and the publick Will or Vote of the People in Parliament, on the other, declaring it self either in Orders or Ordinances of both Houses, or in the single Act of the House of Commons, asserting it self a Parliament, upon the Grounds of the Act, 17 *Car.* providing against its dissolution.

This will appear with the more evidence and certainty, by considering wherein either part had a wrong Cause, or did or might do that which was not their Duty; taking the measure of their Duty from

from what as well the King as the Peoples Repreſentative are obliged unto, by the Fundamental Conſtitution of the Government, which binds them in each of their Capacities and diſtinct Exerciſes of their Truſt, to intend and purſue the true good and welfare of the whole Body or Community as their End. This (in effect) is to detain the People in Obedience and Subjection to the Law of God, and to guide them in the wayes of Righteouſneſs unto God's well-pleaſing: and to avoid falling out or diſagreeing about the Way or Means leading to that End.

Hence that party which in his or their actings was at the greateſt diſtance from, or oppoſition unto this end, and wilfully and unneceſſarily diſagreed and divided from the other, in the Ways and Means that were moſt likely to attain this End; they were aſſuredly in the Fault, and had a Wrong Cauſe to manage, under what ever Name or Face of Authority it was Headed and Upheld. And ſuch a Wrong Cauſe was capable of being eſpouſed and managed under the face of Authority, as might be pretended unto by either part. For as the King (inſiſting upon his Prerogative, and the binding force which his perſonal Will and Pleaſure ought to have, though in diſtinction from, and oppoſition to his Parliament) might depart from the end of Government, anſwerable to his Truſt, and yet urge his Right to be obeyed; So the publick Will of the People, exerciſed in and by the Vote of their Repreſentative in Parliament, aſſerting it ſelf to be of a binding force alſo, and to have the place of a Law, though in diſtinction from the King and Laws alſo, (as ſaith the King) whatever otherwiſe by them is pretended, might alſo depart from the true end of Government, anſwerable to their Truſt, and yet inſiſt upon their Right to be Obeyed and ſubmitted unto; and having Power in their hands, might unduely go about alſo to compel Obedience. It is not lawful either for King or Parliament to urge Authority and compel Obedience as of Right in any ſuch Caſes, where (according to the Law of Nature) the People are at Liberty, and ought to have a Freedom from yeelding Obedience, as they are and ought to have when ever any would compel them to diſobey God, or to do things that evidently in the eye of Reaſon and common ſenſe, are to their hurt and deſtruction. Such things Nature forbids the doing of, having for that very purpoſe, armed Man with the defenſive Weapon of refuſing to conſent and obey, as that Priviledge, whereby Man is diſtinguiſhed from a Beaſt; which, when he is deprived of, he is

made

made a Beaſt, and brought into a ſtate of perfect Servitude and Bondage.

Such a ſtate of Servitude and Bondage may by God's juſt Judgement, be inflicted upon man for ſin and the abuſe of his Liberty, when by God reſtored. The Liberty which man was at firſt created in, is that Priviledge and Right which is allowed to him by the Law of Nature, of not being compelled under any pretence whatſoever to ſin againſt God, or to go againſt the true good and welfare of his own Being; that is to ſay, of his inward or outward man, but in both theſe caſes, to have and to uſe his juſt Liberty, to Diſſent and refuſe to Obey.

For this every man hath that in himſelf, which by God is made a proper and competent Judge. For, as to all ſin againſt God, and the righteouſneſs of his Law, the Light of Conſcience, that is to ſay the Work of the Law, in and upon the Mind or inward Senſe, and in conjunction with it, doth lighten every one that cometh into the World, accuſing or excuſing, if it be but hearkened unto, and kept awake. And for all ſuch actings, as tend to the ruine and deſtruction of man, in his outward and bodily concerns, and as he is the Object of Magiſtratical Power and Juriſdiction, every man hath a Judgement of common Senſe, or a way of diſcerning and being ſenſible thereof, common to bruit Beaſts, that take in their Knowledge by the door of their Senſes, but is much heightned and enobled in man, by the perſonal union it is taken into, with his intellectual part, and intuitive way of diſcerning things, through the inward reflectings of the mind, compared with the Law of God. This inferiour Judgement in man, when it is conjoyned with, and confirmed by the Judgement of his Superiour part, is that which we call Rational, or the dictates of right Reaſon, that man hath a natural right to adhere unto, as the ordinary certain Rule, which is given him by God to walk by, and againſt which he ought not to be compelled, or be forced to depart from it, by the meer Will and Power of another, without better Evidence; that is, a higher, a greater, or more certain way of diſcerning. This therefore in Scripture is called, *Man's Judgement*, or *Man's Day*, in diſtinction from the *Lord's Judgement*, and the *Lord's Day*. And this is that, in every individual man, which in the collective Body of the People, and meeting of Head and Members in Parliament, is called, *The Supream Authority*, and is the publick reaſon and will of the whole Kingdom; the going againſt which, is, in Nature as well as by the Law of Nations, an offence of the higheſt rank,

amongſt men. For it muſt be preſumed, that there is more of the Wiſdom and Will of God in that publick Suffrage of the whole Nation, than of any private Perſon or leſſer collective Body, whatſoever, not better quallified and principled. For Man is made in God's Image, or in a likeneſs, in Judgement and Will, unto God himſelf, according to the meaſure that in his nature he is proportioned and made capable to be the receiver and bearer thereof. Therefore it is, that the reſiſting and oppoſing either of that Judgement or Will, which is in it ſelf Supream, and the Law to all others, (or which bears ſo much proportion and likeneſs to the Supream Will, as is poſſible for a Society and community of Men agreeing together for that end, to contrive and ſet up for an adminiſtration thereof unto them) is againſt the duty of any member of that Society, as well as it is againſt the duty of the Body of the whole Society, to oppoſe its Judgement and Will to that of the Supream Law-giver, their higheſt Soveraign, God himſelf.

The higheſt Judgement and Will, ſet up by God, for Angels and Men in their particular beings, to hold proportion with, and bear conformity unto, (in the capacity of Ruled, in relation to their chief Ruler) ſhines forth in the perſon of Chriſt, the engrafted Word. And when by the Agreement or common Conſent of a Nation or State, there is ſuch a Conſtitution and Form of Adminiſtration pitched upon, as in a ſtanding and ordinary way, may derive and conveigh the neareſt and greateſt likeneſs in humane Laws, or Acts of ſuch a Conſtitution, unto the Judgement and Will of the Supream Legiſlator, as the Rule and declared Duty for every one in that Society to obſerve; It is thereby, that Government or Supream Power comes to receive Being in a Nation or State, and is brought into exerciſe according to God's Ordinance, and Divine Inſtitution. So then, it is not ſo much the Form of the Adminiſtration, as the thing Adminiſtred, wherein the good or evil of Government doth conſiſt; that is to ſay, a greater likeneſs or unlikeneſs unto Judgement and Will of the higheſt Being, in all the Acts or Laws, flowing from the Fundamental Conſtitution of the Government.

Hence it is, that common Conſent, lawfully and rightfully given by the Body of a Nation, and intruſted with Delegates of their own free choice, to be exerciſed by them, as their Repreſentatives, (as well for the Welfare and good of the Body that truſts them, as to the Honour and Well-pleaſing of God the Supream Legiſlator) is the Principle and Means, warranted by the Law of Nature and Nations,

Nations, to give Constitution and Admission to the exercise of Government, and Supream Authority, over them and amongst them: Agreeable hereunto, we are to suppose, that our Ancestors in this Kingdom did proceed, when they constituted the Government thereof, in that form of Administration, which hath been derived to us, in the course and channel of our Customes and Laws; amongst which, the Law and Customes in and of the Parliaments, are to be accounted as chief. For,

Hereby *First*, The Directive or Legislative Power (having the Right to State and Give the Rule for the Governors Duty, and the Subjects Obedience) is continued in our Laws, which as well the King as People are under the Observation of; witness the Coronation Oath, and the Oath of Allegiance.

Secondly, The Coercive or Executive Power is placed in one Person, under the Name and Style of a King, to be put forth not by his own, single, personal Command, but by the signification of his Will and Pleasure, as the Will of the whole State, in and by his Courts of Justice, and stated publick Counsels and Judicatures, agreed on for that purpose, between him and his People, in their Parliamentary Assemblies.

The Will of the whole State, thus signified, the Law it self prefers before the personal Will of the King, in distinction from the Law, and makes the one binding, the other not. So that the publick Will of the State, (signified and declared by the publick Suffrage and Vote of the People or Kingdom in Parliament Assembled) is a Legal and Warrantable ground for the Subjects Obedience, in the things commanded by it, for the good and welfare of the whole Body, according to the best Understanding of such their Representative Body, by it put forth, during the time of its sitting.

The Body with whom the Delegated Vote and publick Suffrage of the whole Nation is Intrusted, being once Assembled, with Power not to be Dissolved but by their own consent, in that capacity the highest Vote and Trust (that can be) is exercised, and this by Authority of Parliament, unto *ex Officio*, or by way of Office are the Keepers of the Liberties of *England*, or of the People, by the said Authority, for which they are accountable if they do not faithfully discharge that their duty. This Office of keeping the Liberty, which by the Law of God and Nature is due to the Community or whole Body of the People, is, by way of Trust, committed by themselves to their own Delegates, and in effect amounts unto this.

1. That they may of right keep out and refuse any to exercise Rule and Command over them, except God himself, who is the Supream and Universal King and Governour; or, such as shall agree in their Actings, to bear his Image, (which is, to be Just) and shew for the Warrant of their Exercise of Soveraignty, both a likeness in Judgement and Will, unto him, who is Wisdom and Righteousness it self; and the Approbation and common Consent of the whole Body, rationally reposing that Trust in them, from what is with visible and apparent Characters manifest to them, of an aptness and sufficiency in them, to give forth such publick Acts of Government, that may bear the Stamp of God's Impression upon them in the Judgements they do and execute; especially, being therein helped with a National Counsel of the Peoples own chooting from time to time.

2. They may of right, keep, hold, and restrain him or them, with whom the Coercive or Executive Power is intrusted, unto a punctual performance of Duty, according to the Fundamental Constitution, the Oath of the Ruler, and the Laws of the Land. And if they shall refuse to be so held and restrained by the humble Desires, Advice and common Consent in Parliament, and the Peoples Delegates be invaded and attempted upon by force, to deter them from the faithful discharge of this their Duty; they may, in asserting their Right, and in a way of their own just Defence, raise Armes, put the issue upon Battel, and Appeal unto God.

3. Such Appeal answered, and the issue decided by Battel, the Peoples Delegates still sitting, and keeping together in their Collective Body, may of right, and according to reason refuse the readmission or new-admission of the Exercise of the former Rulers, or any new Rulers again over the whole Body, till there be received Satisfaction for the former Wrongs done, the expence and hazard of the War, and Security for the time to come, that the like be not committed again. Until this be obtained, they are bound in duty, in such manner as they judge most fit, to provide for the present Government of the whole Body, that the Common-weal receive no detriment.

4. In this which is the proper Office of the Peoples Delegates, and concerns the keeping and defending the Liberty and Right of the whole People and Nation, they may and ought, (during their sitting) to Exercise their own proper Power and Authority (the Exigents of the Kingdom requiring it) although the other two Estates joyntly instructed with them, (in the exercise of the Legislative

giſlative Authority) ſhould deſert their ſtation, or otherwiſe fail in the Execution of their Truſts; yea, or though many or moſt of their own Members (ſo long as a lawful *Quorum* remains) ſhall either voluntarily withdraw from them, or, for juſt cauſe become excluded. In this diſcharge of their truſt, for the common welfare and ſafety of the whole, their Actings (though extraordinary and contrarient to the right of the other two) cannot be treaſonable or criminal, (though they may be tortious, and erroneous) ſeeing they are equals and co-ordinate, in the exerciſe of the Legiſlative Power, and have the Right of their own proper Truſt and Office to diſcharge and defend, though their fellow Truſtees ſhould fail in theirs. Nor can, nor ought the People, as Adherents to their own Delegates and Repreſentatives, to be reputed criminal, or blameworthy, by the Law.

In the exerciſe of one and the ſame Legiſlative power (according to the Fundamental Conſtitution of the Government of *England*) there are three diſtinct publick Votes, allowed for Aſſent or Diſcent, in all matters coming before them; the Agreement of which is eſſential and neceſſary to the paſſing of a Law: the perſonal Vote of the King; the perſonal Votes of the Lords in a Houſe or diſtinct Body; and the Delegated Vote and Suffrage of the whole People, in their Repreſentative Body, or the Houſe of Commons. Unto each of theſe, appertains a diſtinct Office and Priviledge, proper to them.

1. The Regal Office, and the Prerogative thereof to the King.

2. The Judicial Office, to the Lords, as the higheſt Judicature and Court of Juſtice under the King, for the exerciſing Coercive Power, and puniſhing of Malefactors.

3. The Office of the Keepers of the Liberties and Rights of the People, as they are the whole Nation, incorporated under one Head, by their own free and common Conſent.

The Regal Office is the Fountain of all Coercive and Executive Power, purſuant to the Rule, ſet to the ſame by Law, or, the Agreement of the three Eſtates in Parliament.

The Rule which is ſet, is that of Immutable Juſt and Right, according to which, penalties are applicable, and become due, and is firſt ſtated and aſcertained, in the declared Law of God, which is the ſignification or making known by ſome ſign, the Will of the Supream Legiſlator, proceeding from a perfect Judgement and Underſtanding, that is without all Error or Defect.

The Will that flowes from such a Judgement, is in its nature Legislative, and binding, and of right to be obeyed for its own sake, and the perfection it carries in it, and with it, in all its actings. This Will is declared by Word, or Works, or both. By Word we are to understand, either the immediate Breath and Spirit of Gods mouth or mind, or the Inspiration of the Almighty, ministred by the holy Ghost, in and by some creature, as his vessel and instrument, through which the holy Scriptures of the old and new Testament were composed. By works that declare God's Will, we are to understand the whole Book of the Creature, but more eminently and especially, the particular Beings and Natures of Angels and Men, who bear the name and likeness of God in and upon their Judgements and their Wills; their directing Power, and their executive Power of mind, which are essential to their Being, Life, and Motion.

When these direct and execute, in conjunction and harmony with God's Judgement and Will, made known in his Law, they do that which is right; and by adhering and conforming themselves unto this their certain and unerring Guide, do become Guides and Rulers unto others, and are the Objects of right choice, where Rulers are wanting in Church or State.

The Rule then to all action of Angels or Men, is that of moral or immutable Just and Right, which is stated and declared in the Will and Law of God. The first and highest imitation of this Rule, is the Creature-being in the person of Christ. The next is the Bride the Lambs Wife. The next is the innumerable Society of the holy Angels. The next is the Company of Just Men, fixed in their natural Obedience and Duty, through Faith, manifesting it self not onely in their Spirits, but in their outward Man, redeemed even in this World, from the body of corruption, as far as is here attainable. The Power which is directive, and states and ascertains the morallity of the Rule for Obedience, is in the Law of God. But the original, whence all just executive Power arises, which is Magistratical and Coercive, is from the will or free gift of the People, who may either keep the Power in themselves, or give up their Subjection into the hands and will of another, as their Leader and Guide, if they shall judge that thereby they shall better answer the end of Government, to wit, the welfare and safety of the whole, then if they still kept the Power in themselves. And when they part with it, they may do it conditionally or absolutely; and whilst they keep it, they are bound to the right use of it. In this Liberty,

every

every man is created, and it is the Priviledge and juſt Right which is granted unto Man by the Supream Law-giver, even by the Law of Nature, under which man was made.

God himſelf leaves man to the free exerciſe of this his Liberty, when he tenders to him his ſafety and immutability, upon the well or ill uſe of this his Liberty, allowing him the choice, either to be his own guide and ſelf-ruler, in the ability communicated to him, to know and execute Gods Will, and ſo to keep the Liberty he is poſſeſſed of, in giving away his ſubjection or not; or elſe upon God's Call and Promiſe, to give up himſelf in way of ſubjection to God, as his Guide and Ruler, either abſolutely or conditionally. To himſelf he expects abſolute Subjection; to all ſubordinate Rulers, conditional.

While mans Subjection is his own, and in his own keeping, unbeſtowed and ungiven out of himſelf, he is not, nor cannot be accountable by way of crime or offence, againſt his Ruler and Soveraign, but may do with his own what he pleaſe; but ſtill at his peril, if he uſe not this his Liberty as he ſhould, to the end for which it is given him, which is by voluntary and entire reſignation to become an obedient Subject unto him who is the Supream Law-giver, and Rightful King, without poſſibility of change or defection.

Unto this right and the lawful exerciſe and poſſeſſion of, it this Nation did arive by the good providence and gift of God, in calling and aſſembling the Parliament, *November* 3d. 1640. and then continuing their Seſſion by an expreſs Act, 17. *Car.* with power not to be diſſolved but by their own conſent; which was not ſo much the introducing of a new Law, as declaratory of what was Law before, according to Man's natural Right, in which he was created, and of which he was poſſeſſed by God, the ſoveraign giver of all things.

But the paſſing that ſaid Act of Parliament alone, was not that which reſtored the Nation to their original Right, and juſt Natural Liberty; but onely put them in the capacity and poſſibility of it. That which wanted to make out to the Nation a clearneſs in having and obtaining this their right, was the obligation they had put upon themſelves and their poſterities to their preſent Soveraign and his Authority, which in juſtice and by the Oathes of Allegiance they were ſolemnly bound to, in the ſight of God as well as of Man. And therefore, unleſs by the abuſe of that office of Truſt, (to that degree, as on his part, to break the fundamental compact and conſtitution

ſtitution of Government) they could not be ſet free nor reſtored to their original Right and firſt Liberty: eſpecially if together with ſuch breach of Truſt, both parties appeal to God, and put it upon the iſſue of Battel, and God give the deciſion; and in conſequence thereof, that original Right be aſſerted, and poſſeſſion thereof had and held for ſome years, and then not rightfully loſt, but treacherouſly betrayed and given up by thoſe in whom no power was rightfully placed, to give up the ſubjection of the Nation again unto any, whatſoever.

Unto which is to be added, that how and when the diſſolution of the ſaid Parliament, (according to Law) hath been made, is yet unaſcertained, and not particularly declared: by reaſon whereof, and by what hath been before ſhewed, the ſtate of the Caſe on the Subjects part, is much altered, as to the matter of Right, and the Uſurpation is now on the other hand, there being, (as is well known) two ſorts of Uſurpers; either ſuch, as having no right of conſent at all unto the Rule they exerciſe over the Subject; or ſuch, who under pretence of a Right and Title, do claim not by conſent, but by conqueſt and power, or elſe hold themſelves not obliged to the Fundamental compact and conſtitution of Government, but gain unduely from the Subject, (by advantages taken through deceit and violence) that which is not their own by Law.

For a rational Man to give up his Reaſon and Will unto the Judgement and Will of another, (without which, no outward coercive Power can be) whoſe Judgement and Will is not perfectly and unchangeably good and right, is unwiſe, and unſafe, and by the Law of Nature, forbidden. And therefore all ſuch gift, made by rational men, muſt be conditional, either implied, or explicite, to be followers of their Rulers, ſo far as they are followers of that good and right, which is contained in the Law of the Supream Lawgiver, and no further; reſerving to themſelves, (in caſe of ſuch defection and declining of the Rulers actings from the Rule) their primitive and original Freedom, to reſort unto, that ſo they may in ſuch caſe, be as they were before they gave away their ſubjection unto the Will of another; and reſerving alſo the power to have this judged by a meet and competent Judge, which is the Reaſon of the King and Kingdom, declared by their Repreſentatives in Parliament; that is to ſay, the Delegates of the People in the Houſe of Commons aſſembled, and the Commiſſioners on the Kings behalf, by his own Letters Patents, in the Houſe of Peers; which two concurring do very far bind the King, if not wholly.

And

And when these cannot agree, but break one from another, the Commons in Parliament assembled, are *ex Officio*, the Keepers of the Liberties of the Nation, and righteous Possessors and Defendors of it, against all Usurpers and Usurpations whatsoever, by the Laws of *England*.

The Valley of Jehoshaphat, *considered and opened, by comparing* 2. Chron. 20. *with* Joel 3.

IT was the saying of *Austine*; Nothing falls under our senses, or happens in this visible World, but is either commanded or permitted from the invisible and unintelligible Court and Pallace of the highest Emperor and universal King, who is the chief over all the kings of the earth. For although he hath both commanded and permitted a subordinate external Government over Men, administred by man, for the upholding of Justice in humane Societies, and for the peace, welfare, and safety of men that are made in Gods Image; yet, he hath not so entirely put the Rule of the whole earth out of his own hands, but that in cases of eminent injustice and oppression (committed in Provinces, States and Kingdomes, contrary to his Lawes, to their own, and the very end of Magistracy, which is, the conservation of the Peoples just Rights and Liberties) *He that is higher than the highest amongst men, doth regard*, and will shew by some extraordinary interposition of his, that *there are higher than they*.

Such a seasonable and signal appearance of God, for the Succor and Relief of his People, in their greatest Straits and Exigencies, (when they have no might, visible Power, or armed Force, to undertake the great company and multitude that comes against them, nor know what to do, save onely to have their eyes towards him) is called in Scripture, *The day of the Lord's Judgement*. Then the Battel and cause of the Quarrel, will appear to be not so much theirs, as the Lord's: and the frame of their heart will be humble before the Lord, believing in the Lord, and believing his Prophets, for their good success and establishment.

This Dispensation is very lively described under the Type, and by the Name of *The Valley of Jehoshaphat*, as to the Season and Place wherein God will give forth a signal appearance of himself in Judgement, on the behalf of his People, for a final decision of the

Controverſie between them and their enemies. It Litterally and Typically fell out thus, as is at large recorded, 2 *Chron.* 20.

By way of alluſion to this, and upon occaſion of the like, yea, and far greater Extreamities, which God's People in the laſt dayes, are to be brought into, is that Propheſie, *Joel* 3. for a like, yea, a far greater and more ſignal appearance of God for their Deliverance and Reſcue, in order to a final Deciſion of the Controverſie, between his People and the Inhabitants of the earth, by his own Judgement. This is there called, *The Valley of Jehoſhaphat*, in which the Lord will ſit to Judge all his enemies round about. In this Battel and great Deciſion of his Peoples Controverſie, he will cauſe his Mighty Ones to come down from Heaven, to put in their ſickle as reapers in this Vintage and Harveſt, when the wickedneſs is great. Unto this, *Revel.* 14. 14, 20. refers, which doth plainly evidence, that this grand Deciſion is to fall out in the very laſt of times, and probably, is that, which will make way to the Riſing of the Witneſſes, and will be accompanied with that *Earthquake, in which ſhall be ſlain, of men ſeven thouſand, and the tenth part of the City will* thereupon *fall*, *Rev.* 11.

It is expreſſed, *Joel* 3. That in this day of the Lord, wherein he will be *near, in the Valley of Deciſion, the Heavens and the Earth ſhall ſhake, by the Lords own roaring out of Sion; and he himſelf will be the Harbour, Hope and Strength of his People. The Sun and Moon* of earthly Churches and Thrones of Judicature, that conteſt with them, *ſhall be darkened, and the Stars*, (even the choiceſt and moſt illuminated gifted Paſtors & Leaders, in the earthly *Jeruſalem* Churches, with their moſt refined Forms of Worſhip, reſiſting the power of true ſpiritual Godlineſs) *ſhall withdraw their ſhining*. Even their holy fleſh will paſs off from them and conſume away upon their ſpiritual lewdneſs, and confident oppoſing the Faith of Gods Elect, *Jer.* 11. 17. *Their very Eyes will conſume away in their holes, with which they ſay, we ſee*; and for which, Chriſt tells the *Phariſees*, in like caſe, that *their ſin remaineth*. (John 9. 41.) Or, *there remaineth no more benefit from Chriſt's Sacrifice, for their ſin*; and therefore *onely a fearful looking for of the fiery and devouring indignation*, Heb. 10. 26, 27.

Here's that, the great confidence and boaſt of many profeſſing Churches and eminent Paſtors in the earthly *Jeruſalem* Fabrick, or Houſe on the ſand, will come to, *Eze.* 13. and *Mat.* 7. Their very Eyes, their high enlightenings and excellent ſpiritual Gifts, their ſupernatural or infuſed humane Learning, that's admired only

ly as an adorning and accompliſhment of the natural man, (unaccompanied with that Fire-Baptiſme, that's performed by the unſpeakable gift of the Spirit it ſelf, for the transforming of the natural man into ſpiritual) even theſe Eyes becoming evil, (*Mat.* 6.23.) and this light, oppoſing and preferring it ſelf to the more excellent diſcerning and marvellous light in ſpiritual Believers, are turned by the juſt Judgement of God, into the greateſt and moſt fatal blindneſs and darkneſs of all. Their tongues alſo, though the tongues of men and angels, for excellency and dexterity of expreſſing what they ſee, with the forementioned eyes, will conſume away in their mouth, (*Zech.* 14. 12.) and leave them expoſed to become, and accordingly be dealt with, as meer *ſounding braſs and tinckling Cymbals*, (1 *Cor.* 12. 31. and 13. 1.) *giving no certain ſound*, and right warning to the Battels of the Lord, *the good fight of Faith.*

This comes to paſs through their confidence in thoſe attainments, which may be, and oft are turned into an Idol of jealouſie, and ſpiritual whoredom, *Ezek.* 16. 1, 15.

All theſe conſiderations of Church and State, put together, afford great ground of enquiry, as to the Condition of the times in which we live, how far the face which they bear, (and which God hath put upon them, in the courſe of his Providences, for ſome years now paſt) doth ſpeak or ſignifie the near approach of any ſuch extraordinary and ſignal appearance or day of Gods Judgement, for the Deciſion of his own or his Peoples quarrel and controverſie with the prophane Heathen that are round about them, waiting for an advantage, utterly and univerſally to remove and root them out from off the face of the whole earth?

That which hath been acted upon the Theater of theſe Nations, amongſt us, in the true ſtate of our Controverſie, ſeems to be reducible to this following Querie;

Whether the Repreſentative Body of the Kingdom of England, *in Parliament aſſembled, and in their Supream Power and Truſt made indiſſolvable, unleſs by their own Conſent and free Vote, and this by particular and expreſs Statute, have not had a juſt and righteous Cauſe? A Quarrel more God's, than their own?*

1. It may appear they had; *Firſt*, from the Ground of their undertaking the War; Was it not in their own and the Kingdoms juſt and neceſſary defence, and for the maintaining of the publick Rights and Liberties of both?

2. *Secondly*, Was it not undertaken upon mutual Appeals of

both Parties to God, desiring him to judge between them, to give the Decision and Issue by the Law of War, (when no other Law could be heard) as the definitive Sentence in this Controversie, from the Court of Heaven?

3. *Thirdly*, Pursuant to such Decision, did they not recover and repossess the Kingdoms original and primitive freedom? Did they not endeavour to conserve and secure it, as due to them by the Law of God and of Nature? For man was made in God's Image, and all *Adams* Posterity are properly one Universal Kingdom on earth, under the Rule and Government of the Son of God, both as Creator and Redeemer.

By virtue of this original and primitive Freedom so recovered, they were at their own choice, whether to remain in, and retain this their true freedom (unresigned and unsubjected to the Will of any Man) under the Rule of the Son of God and his Lawes, or else to set up a King or any other Form of Government over them, after the manner of other Nations. In this latter case, it is acknowledged, that when a Common-wealth or People, do choose their first King, upon condition to obey him and his Successors, Ruling justly; they ought to remain subject to him, according to the Law, and tenor of the Fundamental Compact with him, on whom they have transferred their Authority. No Jurisdiction remaineth in them (after that free and voluntary Act of theirs) either to Judge the Realm, or determine who is the true Successor, otherwise than is by them reserved and stipulated, by their Fundamental Laws and Constitutions of Government.

And though the righteousness of this Cause (contained in the forementioned particulars) be such, as carries in it its own evidence; yet, as (as things have fallen out) it is come to be oppressed and buried in the grave of Malefactors; in the room of which, a contrary Judgement and Way, is visibly owned, upheld, and intended to be prosecuted to the utmost, for its own fast-rooting and establishment; and this, by the common Consent and Association of Multitudes. What then remaines for the recovery and restitution of that good old Cause and Way, but such a seasonable and signal appearance of God, (as aforesaid) in the Valley of *Jehoshaphat*? What but the taking things immediately into his own hands, for administration of Judgement, and giving the last and final decision? Especially, since what was foretold by *Daniel*, is remarkably accomplished amongst us, to wit, that the visible Power of Gods People should be broken and scattered, so as that they should have no might remaining

maining in and with them, to go againſt the Multitudes, that deſign and reſolve their Ruine.

There is not any remedy left to them, wherein they may expect ſucceſs, but from ſuch a ſignal day of the Lord's immediate appearance in Judgement on their behalf. *For their ſakes therefore, O Lord, return thou on high,* (Pſal. 7. 7.) *take thy Throne of Judicature over me, from which thou haſt ſeemed to have departed, and execute that righteous Judgement, which thou haſt ſeemed for a ſeaſon to have ſuſpended, upon wiſe and holy ends beſt known to thy ſelf.*

In ſuch a dark and gloomy day, thoſe that truely fear the Lord, are directed and required by him, not to fear or be diſmayed, becauſe he will be with them. They are encouraged in the way of Faith onely, to expect this deliverance; even to *ſtand ſtill*, as having no need to fight in this Battel, but onely *to ſee the Salvation of the Lord*, through believing.

ANtient Foundations, when once become deſtructive to thoſe very ends for which they were firſt ordained, and prove hinderances, to the good and enjoyment of humane Societies, to the true Worſhip of God, and the Safety of the People, are for their ſakes, and upon the ſame Reaſons to be altered, for which they were firſt laid. In the way of God's Juſtice they may be ſhaken and removed, in order to accompliſh the Counſels of his Will, upon ſuch a State, Nation, or Kingdom, in order to his introducing a righteous Government, of his own framing.

This may have been the cauſe of our Wandrings as it were in a Wilderneſs, and of God's bringing us back again into *Egypt*, after our near approach to the Land of Reſt; that we have no better known, and had no more care to proſecute, what he principally intended in and by all our Changes and Removes, in the courſe of his Providence. Yea we have added this alſo, to the reſt of our ſins, that we have improved the Gifts and Deliverances that God beſtowed upon us, another way, and to another end than was by him intended, as well as Providentially intimated, by that holy Decree of his, in the Deciſion, declared at the Trial in his Martial Court, with points of Swords.

Here the great Controverſie that had been depending many Ages between Rulers and the Ruled, (as to the Claimes of the one in point of Prerogative; and of the other in their Spiritual and Temporal

poral Freedoms) was after many heats & colds, many skirmishings and battels, at last decided by the Sword. This is a way of Tryal allowed by the known common Law of *England*, and the Law in force throughout all Nations. By this, the Verdict is given forth from a Court of such a Nature, as from whence there is no further appeal; Especially since after the Tryal past, quiet possession was given to the Conquerors, and continued some years. Upon this, Reason and Gratitude to God, obliged us to such a prosecution as might answer the true end of Government; and in especial after that manner, as might be most to God's well-pleasing.

The Powerful Being which by success of Armes, as given to the Peoples Representative Body in Parliament, did communicate to it essentiallity, according to the nature of that Being, for which it was ordained. For that Being, with Power of continuing together at their own pleasure, were as the Soul and Body, unseperated, and they might have performed things necessary at present, for the safety and preservation of the Body they represented. They might have been a good help to settle righteous Government, in a constitution most acceptable to God, and beneficial to the Governed, on the Foundation of God's Institution, and the Peoples Ordination, in consent together, laid by the Power of God and the Peoples own Swords, in the hands of their faithful Trustees.

It would imply a high contempt of God and his Dispensations, so signal amongst us, to communicate the benefit of them to his opposers. The right of chooſing and being chosen into places of Trust in the Government, was returned by the Law of the Sword (which is paramount to all humane Laws) into its primitive exercise, which is warranted by the Law of God and of Nature. By that Law the most famous Monarchies of the World in all Ages were first constituted and setled; and by it God decided our Cause, looking for an event and fruit answerable to the benefit by him given; even such a Government, as God would have given us the Pattern of (had we sought it, as was our duty) whereby Justice and Mercy should have been daily administred according to his will, to the bringing on the *new Heavens and new Earth, wherein Righteousness might dwell.*

The Vessel of this Common-wealth now weather-beaten and torn, seems to be more in danger, than that wherein *Jonah* would have fled to *Tarsus*: For though we have cast forth a great part of our goods to secure it, this has done us but small good. That Ship had but one Delinquint aboard, which occasioned the Storm; and his

his being thrown into the Sea, brought immediate safety. They had also many skilful Seamen to guide it, but all our Pilots are cast over-board, and none left in appearance, but guilty Passengers. Nay, admit with *Jonah*, both the Common-wealth and Cause be brought into most desperate Exigents and Extreamities, from whence there is no more appearing redemption for them, then such as they have, that go down quick into the grave and belly of the Whale; yet they may be preserved, even by that which naturally of it self is irrecoverably destructive to them, and be employed again in service by him against whom they have been so ungratefully rebellious after former great deliverances. So infinite are God's Mercies, yea, so exceeding Merciful are the severest of his Judgements and Dispensations towards his People.

Thus may both People and Army be deprived of their Power, and another party let in to plague and root out from amongst us, such as are more wicked than themselves, and so make room for a more righteous Generation, which will begin all things anew.

By the course of things acted amongst us, God's sentence on our behalf is made void, and that seems given away for ever, which was recovered by the Sword. Our troubles are onely prorogued. No Faith or Contract is thought meet to be kept with Rebels and Hereticks, when by acquired Power it may be broken. 'Twas the great folly and self-flattery of some, to think it would be otherwise. It is most certainly true, that no Time or Prescription, is a just Bar to God's and the Peoples Right.

To murmure against God's Verdict, and resist his Doom, so solemnly given and executed amongst us, in the sight and concurring acknowledgement of the Nations round about, is to become adversaries to God, and to betray our Countrey. If God then do think fit to permit such a dispensation to pass upon us, it is for the punishment of our sins, and for a plague to those that are the Actors therein; to bring more swift exemplary vengeance upon them. Such as have discharged a good Conscience in what may most offend the higher Powers, are not to fear, though they be admitted to the exercise of their Rule, with an unrestrained Power, and revengeful mind.

Though from that Mountain, the Storm that comes, will be very terrible, yet some are safest in Storms, as experience shews. Yea best therein by Gods Mercies, when their greatest enemies think most irrecoverably to undo them.

Our late Condition held much resemblance with that of the

Jewes,

Jewes, and we deſerve as well to be rejected as they were. If Chriſt were in the fleſh amongſt us, as he was with them, we are as likely to prefer theeves and murtherers before him, and crucifie him.

The preſent neceſſity in a righteous Cauſe is to be ſubmitted to, and we are not to be diſcouraged by the danger, which to ſome ſeems threatned us, from former or preſent Laws. For no man that acts for common ſafety, when the Sword hath abſolute power, and ſhall alſo command it, can juſtly be queſtioned afterwards for acting contrary to ſome former Laws, which could be binding no longer then whilſt the Civil Sword had Soveraignty.

What People under Heaven have had more Experiments of God's timely aſſiſtance in all their Extreamities, then *Engliſh-men*, as well with reſpect to times paſt, as within our remembrance? Are the like Mercies recorded of any Nation? In their times of greateſt Confuſion they were preſerved. They were a living active Body without a Head: A Buſh burning in the Flames of a Civil War, yet not conſumed: A People when without a Government, not embrued in one anothers Blood. A wonder to all Neighbours round about, and many ſignal Changes brought about without Blood, which indubitably evidences that God is in the Buſh: and would gather us together as Chickens under a Hen, to be brooded by him, if we were not moſt ſtubbornly hardened.

Our ſins have been the cauſe, that our Counſels, our Forces, our Wit, our Conqueſts, and our Selves have been deſtructive to our ſelves, to each other, and to a happy advancement towards our long expected and deſired Settlement. Until theſe ſins of ours be repented truly and throughly, all the Wiſdom and Power upon Earth ſhall not avail us, but every day, every attempt, will encreaſe our Troubles, until there be a final extirpation of all that hinders God's Work; When this once is, nothing ſhall harm us, God being a ſure refuge againſt all evils, if we reconcile our ſelves to him by Faith and Repentance. Then, even thoſe things that are moſt miſchievous in their own natures, ſhall be made our advantage and ſecurity.

The Peoples Cauſe whom God after trial hath declared free, is a righteous one, though not ſo prudently and righteouſly managed as it might and ought to have been. God's doom therefore is juſtly executed upon us, with what intent and jugglings ſoever it was proſecuted by men.

Man's corruption makes him more firmly to adhere to that which

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is good: in which caſe, it is not many times, Virtue ſo much as Neceſſity that keeps men Conſtant; having no other means of ſafety and ſubſiſtance for the moſt part.

The goodneſs of any Cauſe is not meerly to be judged by the Events, whether viſibly proſperous or unproſperous, but by the righteouſneſs of its Principles: nor is our Faith and Patience to fail under the many fears, doubts, wants, troubles, and Power of Adverſaries, in the paſſage to the recovery of our long loſt Freedom. For it is the ſame Cauſe with that of the *Iſraelites* of old, of which we ought not to be aſhamed or diſtruſtful.

How hath it fared with the Cauſe of Chriſt generally, for more now than 1600 yeass, being made the common object of ſcorn and perſecution, not from the baſe and fooliſh onely, but from the nobleſt and wiſeſt perſons in the Worlds eſteem! Yet, though our Sufferings and the time of our warfare ſeems long, it is very ſhort, conſidering the perpetuity of the Kingdom which at laſt we ſhal obtain, & wherein we ſhal individually reign with the chief Soveraign thereof. For whereas all the Kingdoms of the World have not yet laſted 6000 years, this is everlaſting and without end. They that overcome by not loving their lives unto the death, (*Rev.* 12. 11.) ſhall be Pillars in the Houſe of this everlaſting Kingdom, never to be removed. They ſhall be Kings and Prieſts to God, ſitting with him upon his Throne, ſubjecting the Nations, and reigning with him for ever and ever. This is a Kingdom that conſiſts with the Divinity of Chriſt, and humanity of men. Such a reign of Chriſt upon earth, as will not be without Laws agreeable to humane Nature, nor without Magiſtrates appointed as Officers under him; in which Election, God and the People ſhall have a joint concurrence. God's Throne in mens Conſciences muſt then be reſigned, and his People permitted to enjoy the Liberties, due to them by the Laws of Grace and Nature. Into this, God's own immediate hand can now onely lead us, by his own coming to Judgement in the Valley of *Jehoſhaphat*.

Meditations concerning Man's Life, &c. Penned by this Sufferer in his Priſon State.

IT is a principal part of Wiſdom to know how to eſteem Life; to hold and preſerve, to looſe or give it up. There is ſcarce any thing man more fails in than this. They that think nothing dearer

than Life, esteem Life for it self, live not but to live. Others think the shortest Life best, either not to be born at all or else to die quickly. These are two extreams. That comes nearer Truth, a Wise Man said, Life is such a good, that if a man knew what he did in it, he would not accept, at least not desire it. *Vitam nemo cuperet, si daretur tantum scientibus.* Wise Men, in living, make a Virtue of Necessity, live as long as they should, not as long as they can.

There is a time to Live and a time to die. A good Death is far better and more elegible than an ill Life. A wise man Lives but so long as his Life is more worth than his Death. The longer Life is not alwayes the better. To what end serves a long Life? Simply to live, breath, eat, drink, and see this World? What needs so long a time for all this? Me thinks we should soon be tired with the daily repetition of these and the like Vanities? Would we live long, to gain knowledge, experience, and Virtue? This seems an honest Design, but is better to be had other wayes by good men, when their Bodies are in the grave.

None usually imploy their time so ill in this World, as Men. *Non inopes sumus vitæ, sed prodigi.* Some begin to live when they should die. Some have ended before they begin. 'Tis incident to folly to be alwayes but beginning to Live. Life is but a sorrowful state, a perpetual issue of Errors. 'Tis a Web of unhappy Adventures; A pursuit of divers Miseries enchained together on all sides. *Solum id certum, nil esse certi: Nec miserius quicquam homine nec superbius.* Vanity is the most essential and proper quality of Man's first Nature. The World is not worth that Labour and Pains Man exercises in and about it; which caused that saying; A wise man should do nothing but for himself. Tis not reason wise men should put themselves in danger for Fooles, much less for Knaves.

The Will onely is truly Mans own, and the considerable part of the reasonable Soul. On it depend the issues of Good or Evil, Life or Death. All the rest of a Man, his Understanding, Memory, Imagination, may be taken from him, altered, troubled by a thousand accidents. But the Will is so much in our own power, that it cannot be taken away, though its action may be hindred. 'Tis our own, till we knowingly and freely give it away, which may be. And he that hath once absolutely given up his Will to another, is no more his own man. He hath left himself nothing of his own. Tis by the Will we are good or evil, happy or unhappy.

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He that gives up his Will to the Rule and Government of another, becomes ſubject to that other. Men that are born equal, come to be made ſubject two wayes; either, by the free giving up of themſelves to others, or by others violent aſſuming and exerciſing power over them, becauſe they are ſtrangers, as *Nimrod* the mighty hunter of men, ſerved his fellow mortals.

Government is either Royal, or Seignioral and Tyrannical, as the *Turks*. 'Tis then properly Royal, be it adminiſtred by one, by many, or by all their Repreſentatives, when he or they that have Soveraign Power, obey the Laws of Nature, preſerve the natural Liberty and propriety of the Goods and Perſons of the Subjects, which no reaſonable men, acted by ſound judgement, will ever abſolutely give away, but ſecure their right in, and power over, by fundamental Contracts and Agreements with their Governors.

Abſolute Soveraignty is a perpetual power over all, without any reſtraint, limitations or conditions put upon the Soveraign. This conſiſts in a power of giving Laws to all in general, and to every one in particular, without the conſent or gift of any others, and requiring univerſal and undiſpenſable obedience to all his Commands, under juſt penalties. This Soveraignty is proper onely to the higheſt Being, not at all to Creatures, though where the Government is Deſpotical and Seignioral, it is aſſumed and exerciſed.

But Government Royal, is that which is conſonant to the immutable Laws of Nature and Dictates of right Reaſon, which require a conſervation of the Subjects Liberty, and Propriety in their goods and perſons, as well as the preſervation and upholding of Empire and Authority in the Prince, and find out the Medium, through the mutual Agreements of Soveraign and Subjects, for both to conſiſt.

In Quarrels between Subjects and Soveraigns, about the Subjects Liberty and the Kings Prerogative, 'tis ſeldom ſeen, but the Error lies on the Soveraign's part, who is apt to be flattered into the preſumptuous exerciſe of ſuch an abſolute Soveraignty and Legiſlative Dominion over them, as becomes no creature, and exceeds all the bounds of that Contract he made with them, at his Inauguration.

All juſt Power and Authority is from God, and by virtue of his Ordinance and Inſtitution. *He therefore that reſiſteth the Power, re-*

fisteth the Ordinance of God. But all contrarient actings against the Prince, are not to be accounted a resisting of the Power; especially, when the whole State is concerned, and the business is managed by publick Trustees, called and authorized by Law, as Conservers of the State, and Defenders of the publick Liberties and Lawes thereof. In such a publick capacity, to stand in the gap, when a Breach is made, and hinder any charge or attempt that would ruinate the State, is Duty. In such case, they ought to withstand and hinder the violent proceedings of any, either by way of Justice in a Legal tryal, or by force. For the Prince is not Master of the State, but onely a Guardian and Defender thereof, from injuries and evil. Yet these affaires, for redress of Grievances, in case of Princes failers, belong not to all, but to the Tutors and Maintainers of the State, or those that are interested therein; as Electors in Elective States, and in Hereditary States, the States General and Representative Body of the Kingdom, according to the tenor of their fundamental Laws. In this case it is generally acknowledged lawful, to resist a Tyrant.

Under the cross Accidents, issuing from such Contests, to which man is subject through others arbitrary Domination, he may carry himself well, two wayes.

1. By a strong and vigorous resistance thereof, to the last, for diverting or blunting the point of it, so as either to escape or force it.

2. The other way, and that perhaps the surest, is to take and receive these Accidents at the worst, let them prove what they will, though to the loss of Life and all that's dear to him in this World. To resolve within himself to bear them sweetly and patiently, and peaceably to attend whatever shall happen, without tormenting himself about it, or loosing the calmness and serenity of his mind in going about to hinder or prevent it. He that takes the first course, labours to escape; he that takes the latter is content rather to suffer. This many times proves the better bargain. 'Tis possible to incur greater inconveniency and loss in pleading and contending, than in loosing, or in flying for safety, than in suffering.

Concerning Friendship.

Perfect friendship is a very plain and universal complication or enfolding of two Soules in one, so, that the Conjunction is most intimate and inseparable. They can no more be divided; nor would they, if they might. *Secondly,*

Secondly, It is very free, being built upon the pure choice and liberty of the Will, without any other obligation or forreign motive.

Thirdly, Without any exception of things, goods, honours, judgements, thoughts, wills, Life.

Marriage it ſelf is ſome reſemblance of this divine knot, as ſaith the Apoſtle, who from thence mounts in his contemplation to the great myſterie of this kind between Chriſt and his Church. *Abraham* is called, *the friend of God.*

Concerning Enemies.

In reference to our Enemies we muſt take care, not to meditate Revenge. Yet in ſome ſenſe we may account it an excellent and worthy revenge, to ſlight the worſt they can do, whereby we take away the pleaſure which they think to have, in vexing us. We muſt in ſuffering Injuries, have reſpect to our ſelves and to him that offends us. Touching our ſelves, we muſt take heed, that we do nothing unworthy or unbecoming us, that may give the enemy advantage againſt us. As to him that offends us, we ſhould be wiſe as Serpents to wave his aſſault, till our hour is come, and we can gain and conquer by dying.

It is a weakneſs of mind not to know how to contemn an offence. An honeſt man is not ſubject to Injury. He is inviolable and unmoveable. Inviolable, not ſo much that he cannot be beaten; but, that being beaten, he doth neither receive wound nor hurt. We can receive no evil but of our ſelves. We may therefore always ſay with *Socrates*, *My enemies may put me to death, but they ſhall never enforce me to do that which I ought not.*

Evils themſelves, through the wiſe over-ruling Providence of God, have good fruits and effects. The World would be extinguiſhed and periſh, if it were not changed, ſhaken and diſcompoſed, by a variety and an interchangable courſe of things, wiſely ordered by God, the beſt Phyſitian. This ought to ſatisfie every honeſt and reaſonable mind, and make it joyfully ſubmit to the worſt of changes, how ſtrange and wonderful ſoever they may ſeem, ſince they are the works of God and Nature, and that which is a loſs in one reſpect, is a gain in another.

Let not a wiſe man diſdain or ill reſent any thing that ſhall happen to him. Let him know thoſe things that ſeem hurtful to him in particular, pertain to the preſervation of the whole Univerſe,

verſe, and are of the nature of thoſe things, that finiſh and fill up the courſe and office of this World.

Meditations on Death.

IT is a fruit of true Wiſdom, not onely Chriſtian but Natural, to be found and kept in a frame of mind, ready for Death.

The day of Death is the Judge of all our other dayes; the very tryal and touchſtone of the actions of our Life. 'Tis the end that crowns the work, and a good Death honoureth a man's whole Life.

This laſt act, as it is the moſt difficult, ſo but by this a man cannot well judge of the actions of anothers Life, without wronging him.

A wiſe *Greek* being asked concerning three eminent perſons, which of them was to be moſt eſteemed, returned this Anſwer, *We muſt ſee them all three die, before this Queſtion can be reſolved:* With which accords that ſaying of *Solon*, the wiſe *Athenian* to *Craſſus*, when he boaſtingly ſhewed him his great Treaſures, *No man is to be accounted happy before his Death.*

True natural Wiſdom purſueth the learning and practiſe of dying well, as the very end of Life; and indeed, he hath not ſpent his Life ill, that hath learned to die well. It is the chiefeſt thing and duty of Life.

The knowledge of Dying, is the knowledge of Liberty, the ſtate of true Freedom, the way to Fear nothing, to Live well, contentedly and peaceably. Without this there is no more pleaſure in Life, than in the fruition of that thing, which a man feareth alwayes to looſe. In order to which, we muſt above all endeavour that our ſins may die, and that we ſee them dead before our ſelves, which alone can give us boldneſs in the day of Judgement, and make us alwayes ready and prepared for Death.

Death is not to be feared and fled from, as it is by moſt, but ſweetly and patiently to be waited for, as a thing natural, reaſonable, and inevitable. It is to be looked upon as a thing indifferent, carrying no harm in it. This, that is all the hurt enemies can do us, is that which we ſhould deſire and ſeek after, as the onely Haven of Reſt, from all the Torments of this Life; and which, as it gives us a fuller fruition of Chriſt, is a very great gain, that the ſooner we are poſſeſſors of, the better.

Death

Death is the onely thing of all evils, or privations, that doth no harm, hath indeed no evil in it, however it be reputed. *The ſting of it is ſin*, and that is the ſting of Life too. There is no reaſon to fear it, becauſe no man knows certainly what it is. This made *Socrates* refuſe to plead before his Judges, for his juſtification or Life. For (ſaith he) *If I ſhould plead for my Life, and deſire of you that I may not die, I doubt I may ſpeak againſt my ſelf, to my loſs and hindrance, who may find more good in death than yet I know. Thoſe things I know to be evil, as unrighteouſneſs and ſin, I fly and avoid; thoſe that I know not to be ſo, as Death, &c. I cannot fear, and therefore I leave it to you to determine for me, whether it is more expedient for me to Dye or to Live.*

He can never live contentedly that fears to dye. That man onely is a free man who feareth not Death, Life it ſelf being but ſlavery, if it were not made free by Death. It is uncertain in what place Death attends us, therefore let us expect it in all places, and be alwayes ready to receive it. Great virtue, and great or long Life do ſeldom meet together. Life is meaſured by the end, if that be good, all the reſt will have a proportion to it. The quantity is nothing, as to the making it more or leſs happy.

The Spirit of a good man, when he ceaſes to live in the Body, goes into a better ſtate of Life, than that which he exerciſes in this World; and when once in that, were it poſſible to reſume this, he would refuſe it. Yea were a man capable to know what this Life here is, before he receives it, he would ſcarce ever have accepted it at firſt. The ſelf ſame journey men have taken, from no being to being, and from pre-exiſtent being, into mortal Life, without fear or paſſion, they may take again from that Life by Death, into a Life that hath immortality in it.

Death is the inevitable Law, God and Nature have put upon us. Things certain, ſhould not be feared, but expected. Things doubtful onely are to be feared. Death in ſtead of taking away any thing from us, gives us all, even the perfection of our natures; ſets us at liberty both from our own bodily deſires, & others domination; makes the Servant free from his Maſter. It doth not bring us into darkneſs, but takes darkneſs out of us, us out of darkneſs, and puts us into marvellous light. Nothing periſhes or is diſſolved by Death, but the Vail and Covering, which is wont to be done away from all ripe fruit. It brings us out of a dark dungeon, through the crannies whereof, our ſight of Light is but weak and ſmall, and brings us into an open Liberty, an eſtate of Light and Life, unvailed and perpetual.

petual. It takes us out of that mortality which began in the womb of our Mother, and now endeth, to bring us into that Life which ſhall never end. This day which thou feareſt as thy laſt, is thy Birth day into Eternity.

Death holds a high place in the policy and great common-wealth of the World. It is very profitable for the ſucceſſion and continuance of the works of Nature.

The fading corruption, and loſs of this life, is the paſſage into a better. Death is no leſs eſſential to us, than to live or to be born. In flying Death thou flyeſt thy ſelf, thy eſſence is equally parted into theſe two, Life and Death. It is the condition and Law of thy Creation. Men are not ſent into the World by God, but with purpoſe to go forth again; which he that is not willing to do, ſhould not come in.

The firſt day of thy birth, bindeth thee and ſets thee in the way as well to Death as to Life. To be unwilling therefore to die, is to be unwilling to be a Man, ſince to be a Man is to be Mortal. It being therefore ſo ſerviceable to Nature and the inſtitution of it, why ſhould it be feared or ſhunned? Beſides, it is neceſſary and inevitable, we muſt do our beſt endeavour in things that are not Remedileſs, but ought to grow reſolute in things paſt Remedy.

It is moſt juſt, reaſonable, and deſirable, to arive at that place towards which we are alwayes walking. Why feareſt thou to go whither all the World goes? It is the part of a valiant and generous Mind, to prefer ſome things before Life, as things, for which a man ſhould not doubt nor fear to die. In ſuch a caſe, however matters go, a man muſt more account thereof than of his Life. He muſt run his race with reſolution, that he may perform things profitable and exemplary.

The contempt of Death, is that which produceth the boldeſt and moſt honourable exploits. He that fears not to die, fears nothing. From hence have proceeded the commendable Reſolutions and free Speeches of Vertue, uttered by men, of whom the world hath not been worthy.

A gallant *Romane*, commanded by *Veſpaſian* not to come to the Senate, anſwered, *He was a Senator, therefore fit to be at the Senate; and being there, if required to give his advice, he would do it as his Conſcience commanded him.* Hereupon being threatned by the Emperor, he replyed, *Did I ever tell you, that I was immortal? Do you what you will, and I will do what I ought. It is in your power to put me unjuſtly to death; and in mine to die conſtantly.* What hard dealing cannot

he

he ſuffer, that fears not to die? Other deſignments may be hindred by our enemies, but they cannot hinder us from dying. The means whereby to live free, is to contemn Death. It is no great thing to live, ſlaves and beaſts can do that, but it is a great matter to live freely, and die honeſtly, wiſely, conſtantly. *Emori nolo* (ſaith one) *ſed me eſſe mortuum, nihil eſtimo*; I would not die, but to be dead, I look upon as nothing. But no man can be ſaid reſolute to die, that is afraid to confront it, and ſuffer with his eyes open, as *Socrates* did, without paſſion or alteration.

In a miſerable eſtate of Life, which a man cannot remedy, Death is lawfully deſirable, as our beſt retreat and onely haven from the ſtorms of this Life; and as the Soveraign good of nature, the onely ſtay and pillar of Liberty. It is a good time to die, when to live is rather a burthen than a bleſſing, and there is more ill in Life than good.

There are many things in Life, far worſe than Death, in reſpect whereof we ſhould rather die than live. The more voluntary our Death is, the more honourable. Life may be taken away from every man by every man, but not Death.

It is no ſmal reproach to a Chriſtian, whoſe faith is in immortality and the bleſſedneſs of another Life, to fear Death much, which is the neceſſary paſſage thereunto. He ought rather to deſire and thirſt after death, as great gain; *Vitam habere in patientiâ, & mortem in deſiderio*; to endure Life, and deſire Death. But it is greater conſtancy, well to uſe the chain wherewith we are bound, than to break it. A man is not to abandon his charge in Life, without the expreſs command of him that gave it him. *Sylvanus* and *Proximus*, being pardoned by *Nero*, choſe Death, rather than to Live upon thoſe terms. *Nerva* a great Lawyer, *Cato* of *Utica*, and others, died, as not able to bear the ſight of the Weal-publick in that bad and declining ſtate, into which by Gods Providence it was brought, in their times, but they ſhould have conſidered,

Multa dies variuſq; labor mutabilis Ævi,
Retulit in melius.

A man ought to carry himſelf blamleſly and with a ſteddy courage in his place and calling, againſt his aſſailants, and conſider that it is better to continue firme and conſtant to the end, then fearfully to fly or dye. It is not a leſs evil to quit the place and fly, than obſtinately to be taken and periſh. It is a great point of wiſdom to know the right hour and fit ſeaſon to Die. Many men have ſurvived their own Glory. That is the beſt Death which is

well recollected in it self, quiet, solitary, and attendeth wholly to what at that time is fittest.

But let us more particularly, and upon truly and purely Christian Principles, weigh and consider Death.

They that live by Faith, die daily. The Life which Faith teaches, works Death. It leads up the mind to things not seen, which are eternal, and takes it off with its affections and desires, from things seen, which are temporary. It acquaints the soul experimentally with that heavenly way of converse and intercourse, which is not expressed by sensible signes, but by the demonstration proper to spirits, whether angels, souls separate, or souls yet in the body, as they live by faith, not by sense. In which respect, the use of voice and mouth is attributed to God, to Christ, to Angels, who have that with them and in them, whereby they outwardly manifest what they inwardly conceive, although they express not the inward word of their mental conception, by any outward voice, hand, eye, or other external sign, but by the way of its own self evidencing brightness, and essential demonstration. Such a way of living and shining forth in man's naked essential beams, he then arrives unto, when the thick vail and wall of his flesh is dissolved, and his earthly tabernacle put off.

The knowledge, sight, and experience of such a kind of subsisting and heavenly manner of Life, that man is capable of, is the best preparative, and most powerful motive, to leave the body, and surcease the use of our earthly organs. This in effect is all that bodily death, rightly known and understood, doth impart; a lawful surceasing the use and exercise of our earthly organs, and our willing and chearful resorting to the use and exercise of that Life without the Body, which man is capable to subsist in, when made perfect in spirit, an equal and associate with angels, under the power and order of expressing what he inwardly conceives, as they do. This made *Paul* look upon Life in the Body, and Life out of it, with no indifferent eye, but as accounting the being at home in the body, an absence from the Lord; and such a kind of absence from the body as death causes, to be that which makes us most present with the Lord: which therefore we should be most willing unto, and with greatest longing after, desire. The strait which the Apostle found himself in, was not at all from the least hæsitation in his mind, which of the two, was in it self best and to be preferred, but by which Christ might most be magnified, and the Church benefitted, according to the will of Christ.

So

So then unleſs to live were Chriſt, and a real and clear magnifying of Chriſt in his Body, he cared not for Life, but contemned Death. He ſaw evidently how it was his own particular loſs and hindrance, even, not to Die, ſince to be diſſolved, to depart and be with Chriſt, and in the Society of the bleſſed Angels and Saints in Heaven, was beſt of all, and far more gainful and to be valued by him, than any longer continuance or abode in the fleſh.

The magnifying of Chriſt in his Body, whether by Life or by Death, was the Conſideration with *Paul*, that held the ballance, caſt the ſcale, and that onely. So it ought to be with every true Chriſtian.

The end of man's coming into the Body, and his temporary continuance and abode there, according to the Law of his Creation, is the magnifying and glorifying Chriſt, either by his Life or by his Death, or both, the one of which if he do not, it muſt needs be his ſin, and he is left without excuſe. For none can violate or corrupt the mind of man, by the Law of Nature, nor let in Death upon his Spiritual Subſtance, but himſelf, though they diſſolve his temporary abode in the fleſh, break his outward caſe and ſhel; and rather than do the one, we ſhould chooſe the other, chooſe affliction rather than ſin, the diſſolution of the Body, rather than the corrupting of the Mind. In ſo doing and dying, Chriſt is magnifyed. Thus *Peter* was foretold, *by what Death he ſhould glorify God. And to ſuch it is given by Chriſt, not onely to Believe, but Suffer and Die for his Names ſake*, as a tranſcendent priviledge and honour.

If no reſtraint then be upon our mind from without, what hinders that Chriſt is not magnified in our Body, but ſomething within us, in our judgement, will, and affections, that are not right ſet and fixed, nor as yet wrought to this ſelf ſame thing by God, who hath *given us the earneſt of his Spirit*?

But it may be demanded, What is it, in which this great duty of man lies, as to the magnifying of Chriſt in his Body by his Life, or living in the Body, which is a more difficult thing to do than to Die? Chriſt himſelf tells us, when he ſaith, *Let your Light ſo ſhine before men, that they may ſee*, feel, and ſenſibly diſcern, *your good works*; *and ſo, glorify your father which is in Heaven.*

There are two ſorts of ſigns we read of, in thoſe that believe, which juſtifie their Faith, in conſortſhip (as it were) with which their Faith works and is made perfect, ſo as *the work of Faith is fulfilled in them with power.*

1. Signs Extraordinary, as *Mark* 16. 18. with which the Pri-

mitive Christians were well acquainted, and so may all such again, as arrive to any competent maturity in that primitive Christian Spirit.

2. Signes Ordinary, as those mentioned, *Gal.* 5. 22, 23. called, *the fruits of the Spirit in us*, that makes us *mighty in word and in deed, not onely to will but to perform that which is good; by being filled with the Spirit in our very Bodies, made the Temples of the holy Ghost, rich in Faith and* such *good Works*, as are the fruit of Faith, *without which, Faith it self is dead* and unprofitable; and by which, *Abraham justified his Faith, and was called, the Friend of God.*

It is in this sense, the Prophet urges the sanctification of our Vessels, when he saith, *Be ye clean that bear the Vessels of the Lord.* And the Apostle, when he saith, 1 *Cor.* 6. 19. *What! know ye not that your Body is the Temple of the holy Ghost*, unto which Redemption by Christ extends, as well as to your Spirits? *therefore glorify God in your Body as well as in your Spirit, which is God's*, and wherein he hath and challengeth a special propriety.

The Body in Scripture acceptation, signifies, not onely the material substance, from which the Soul is actually separated, when it is laid in the Grave; but very usually the Soul it self, that is to say, that part of the Soul, which vitally unites the Body to it self, whose faculty and operation is in and by the Body, and doth properly and immediately exercise bodily Life, as that which is co-natural, and co-essential to it.

There is a higher part in man's Soul, called Spirit, in distinction from Soul and Body, expressed 1 *Thes.* 5. 23. as if the Spirit were an entire thing in it self, though it be that, in and with which, Soul and Body doth consist, as parts of the whole Man. *I pray God*, saith the Apostle, *that your whole Spirit, Soul, and Body, be preserved blameless to the coming of Christ, and that you may be sanctified throughout*, or in every part of you, *in your Soul and in your Body*, which are to be esteemed but as parts, comparatively with your whole Spirit.

Man, considered as entire in his Spirit, may have and hath being, before he partakes of Flesh and Blood, as it is written, *Behold*, saith Christ, *I and the children which thou hast given me. Forasmuch then as the children are partakers of Flesh and Blood, he also himself took part of the same:* even he, who, with the children, were a mystery hid with the Father, before the World was, and had their Seminal and radical Being, in the Word of Life, the Father of Spirits. In this Word, as in the Image and Mental conception of the invisible God, the Souls of all men, even of Christ himself, as man, were com-

comprehended, as in their original pattern and rule, in order at the time appointed, to come into flesh, and there make their temporary abode, allotted to them.

By the Condition and Law of Man's Creation, he is made a Spiritual essence, with two distinct faculties and operations, according to which he may be said to be both Immortal and Mortal, Immaterial and Material, Spirit and Body, as Body signifies man's animal rational Soul, that is to live in flesh, and hath its peculiar desire, faculty, and operation, proportioned thereunto. In all this Man bears the Image and Similitude of God the Mediator, or of the Godhead in Christ, as two Natures in him are Hypostatically united, and make but one *Compositum*, or Person. This was comprehended in that Counsel which the blessed Trinity took concerning the making of Man in their Image, and after their Similitude. He was made male and female in his very Spiritual substance.

First, with a faculty, and operation of mind, superiour, stronger and more excellent, which is free and independent upon bodily organs, exercising Life, properly and purely Spiritual and Immaterial, above and without the use of sensible, signes, or shapes.

Secondly, With that inferiour faculty and operation of mind, whose subsistence, life, being, and motion, is in, with, and by the body, and through the use of bodily organs, sensible signes, and external mediums, on the loss of which, this second faculty and operation of man's Soul, which is the weaker, inferiour, and less valuable, ceases; at least, is for a time suspended, which in Scripture phrase is called *Death*; even the Death of the Body. Yet the more vigorous the exercise of this latter is, and the more that thereby we are at home in the Body, the more in truth and reality we are dead; at least, asleep in the earth, as to our more Noble and Spiritual part, in and through which, we enjoy most of the presence of God and of Christ.

Since therefore, mans constitution of Being, is such, as he cannot live both these Lives together, untill the Resurrection, but that in the one of them, he must be incompleat, have his operation much suspended, and be, as it were dead or asleep.

To resolve which of these to choose and prefer, ought not to be so difficult, as commonly it is made.

On the *SUFFERINGS* of the Renowned Sir *H. Vane*, Knight.

—Great Soul, ne're Underſtood
Until deciphered by thy Blood,
A Prieſt, a Prophet, and a King,
Syſteme of every worthy thing.
Dying, that Liberty might Live,
The Engliſh Cauſe *he doth retrieve;*
Stating it in no formal dreſs,
But in the Spirit of Righteouſneſs.
Which he from th'earth perceiving fled,
Dy'd, to Return with't from the Dead.
Perſons or Forms of Government,
Did little make to his intent.
To nought was he an Enemy,
But what was fix'd in Enmity.
'Gainſt which he fought with eager breath,
Became Victorious in his Death.
And this not by neceſſity,
It was his Principle to Dye.
Fleſh will reſiſt, but Faith can ſuffer,
The ſoft hand's gone, beware the rougher.
Th'envy and hate of every Form,
Upon his head pour'd down the Storm.
Whilſt he ſublim'd, and ſav'd the good
O'th' loweſt, and ſeal'd it with his Blood.
How great he was, his Enemies tell,
Who, while he liv'd, could not be well.
And in what ſtead his offering ſtood,
By reſolute ſilence, Friends made good.
The male o'th' Flock is ta'ne, the beſt,
To expiate the blame o'th' reſt.
What tears and prayers wanted in ſtrength,
His crying blood brings down at length.
Groan, Engliſh Hearts! groan! help the cry,
Lord Jeſus Come! I come quickly.

FINIS.

The Printer to the Reader.

IT's very probable thou mayeſt meet with ſome faults and miſ-printings eſcaped the Corrector, which could not be avoided, by reaſon of the diſtance between the Tranſcriber and the Preſs; thou art deſired to correct them, and paſs them by with candor. One thou mayeſt find in *page* 54, and 55, all thoſe words within the Parentheſis, ſhould come in after the word *Penetent.* And *page* 97. in the Title to that part, read *Caſe* for *Cauſe.*